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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

HUZHOU CHUANGTAI RONGYUAN  
INVESTMENT MANAGEMENT  
PARTNERSHIP, *et al.*,

Petitioners,

v.

21 Cv. 9221 (KPF)

HUI QIN,

Respondent.

Argument

New York, N.Y.  
August 17, 2023  
3:15 p.m.

Before:

HON. KATHERINE POLK FAILLA,

District Judge

APPEARANCES

PILLSBURY WINTHROP SHAW PITTMAN LLP  
Attorneys for Petitioners  
BY: GEOFFREY R. SANT  
CAROL LEE  
ANDREW C. SMITH

SEIDEN LAW GROUP LLP  
Attorney for Respondent  
BY: JENNIFER H. BLECHER  
XINTONG ZHANG  
AMIAD M. KUSHNER

Also present: SHI FENG, Interpreter (Mandarin)

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(In open court; case called)

THE DEPUTY CLERK: Counsel, please state your name for the record, starting with the plaintiffs.

MR. SANT: Jeffrey Sant for plaintiffs.

MS. LEE: Carol Lee for plaintiff.

MR. SMITH: Andrew Smith for petitioners.

THE COURT: Thank you very much.

I understand I will be hearing from Mr. Sant in the first instance. Is that correct?

MR. SANT: If your Honor permits, we would like to divide up the presentation. Is that okay?

THE COURT: It might be. Let me understand, please. Welcome back.

MR. ZHANG: I'm sorry, your Honor. I was trying to pick up the translator. She went to the wrong entry.

THE COURT: Will I know in advance how the labor has been divided or will it just depend on my questions, sir?

MR. SANT: If your Honor permits us to do a presentation, we were thinking that I would present on the document spoliation and how that requires a contempt finding. Ms. Lee is ready to present on his refusal to give straight answers in the depositions, which requires an adverse inference finding. And Mr. Smith is ready to present on the relief that we are seeking in general.

THE COURT: I see. I won't immediately reject your

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1 thoughtful proposal. What I will say is I want you to  
2 understand that I have in fact read all of the written  
3 materials, so I don't want you to repeat what is said. You can  
4 refer to it and say, as I mentioned in our brief, but I don't  
5 want you to repeat yourself.

6 At the back table, you're welcome to introduce  
7 yourselves.

8 MS. BLECHER: Jennifer Blecher for respondent.

9 MR. ZHANG: Xintong Zhang for respondent.

10 THE COURT: And Mr. Kushner.

11 MR. KUSHNER: Amiad Kushner for Mr. Qin.

12 THE COURT: Ms. Blecher, do I understand you're taking  
13 the lead this afternoon or is there a similar division of  
14 labor?

15 MS. BLECHER: There is no division of labor. I will  
16 be handling all topics, your Honor.

17 THE COURT: Thank you.

18 Counsel, when we last spoke substantively on this  
19 issue, I believe I expressed a concern that I had, or maybe  
20 just an issue that I had about the question of my jurisdiction.  
21 I am aware that there is in fact an ongoing appeal up at the  
22 Second Circuit regarding the --

23 MS. BLECHER: Our translator, your Honor.

24 THE COURT: Good afternoon.

25 THE INTERPRETER: Good afternoon, your Honor.

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1 THE COURT: I will resume.

2 I was concerned and I wanted to understand the degree  
3 to which the pending appeal impacted my ability to hear further  
4 motion practice in this case. And having looked at a number of  
5 issues and a number of sources, it does appear to me that I do  
6 have jurisdiction, and no one here seems to contest that I do.  
7 I did want to make sure that I had it, and it would seem to me  
8 that I have it because I retain the right, even after the  
9 filing of a valid notice of appeal, I retain the right to  
10 enforce the judgment if the judgment has not been stayed or  
11 superseded. It has not been in either case, and so, therefore,  
12 I feel I am comfortable going forward. Once again, I will tell  
13 the parties, if you wake up tomorrow and think that I do not  
14 have jurisdiction, someone ought to tell me quickly. All of  
15 the research that I have done suggests that I have  
16 jurisdiction, so I wanted to begin with that.

17 I also wanted to make sure I understood the state of  
18 play in this case, and here's what I mean by that. Based on  
19 all of the materials that I have reviewed in preparation for  
20 this conference, I am understanding petitioners to be telling  
21 me that since my order in April, there has been no, if you  
22 will, forward progress with respect to discovery. There has  
23 been additional depositions, but there have been no additional  
24 documents produced; there has been no additional information  
25 provided at the depositions. And what I understand the

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1 respondents to be saying is that Mr. Qin has produced all that  
2 he can. So to the extent that there has been no forward  
3 progress, as I have described it, in discovery since our last  
4 proceeding, since my last order in the case, that is simply  
5 because there is nothing else to give.

6 So perhaps I can begin there. Mr. Sant, do I  
7 understand your position correctly?

8 You are Mr. Sant, correct?

9 MR. SANT: Yes, your Honor.

10 THE COURT: I will try that again. The position that  
11 I understand you to be saying is, you have gotten nothing of  
12 substance since my April order, which is why you have renewed  
13 your motion.

14 MR. SANT: Your Honor, that is correct. In fact, we  
15 have created a demonstrative, if your Honor would like to see  
16 it, going through each of the 17 categories.

17 THE COURT: Is that something that was given to me as  
18 an exhibit to a prior matter or is it something you prepared  
19 for today?

20 MR. SANT: We prepared it for today. We thought it  
21 might be helpful.

22 THE COURT: I will ask you to pass it to me and also  
23 to the folks at the back table if you haven't already done so  
24 already. Thank you.

25 MR. SANT: So, as your Honor can see from the

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1 demonstrative, there were 17 --

2 THE COURT: Is there an extra copy?

3 MR. SANT: Yes, your Honor.

4 THE COURT: Let's continue.

5 MR. SANT: I will just briefly summarize what this  
6 shows. Your Honor in the April 18 order set forth 17  
7 categories of documents, which Mr. Qin must produce within  
8 three days. He produced no documents whatsoever within those  
9 three days. Since then he has only produced a smattering of  
10 documents.

11 And as one can see from looking at the chart, the  
12 categories in red are completely unproduced, not a single page  
13 has been produced. The categories that have been highlighted  
14 in yellow, this is the third column status, are partially  
15 outstanding. And the sad thing is that partially in most cases  
16 means almost completely outstanding.

17 The only really significant production that Mr. Qin  
18 made was a handful, truly a handful of screenshots of some  
19 communications he had with some people.

20 So if you look at category number 13, Mr. Qin produced  
21 six pages of screenshots of messages with all of these  
22 different individuals that this Court ordered production for.  
23 Six pages of screenshots is on its face absurd.

24 Then in category number 15, all communications for  
25 these different individuals, again, he has produced a handful

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1 of screenshots.

2 In category number 14, the total number of screenshots  
3 was 12 pages of screenshots.

4 So the production is beyond minimal, your Honor. And  
5 everything is completely outstanding.

6 I would just highlight one item in particular. Mr.  
7 Qin produced no new bank records since this Court's April 18  
8 order.

9 THE COURT: He has indicated that that's because he  
10 has been told that he has to go to the physical bank in order  
11 to get those records.

12 MR. SANT: I would be happy to respond to that point  
13 directly. But prior to doing so, I would like to point out  
14 that the bank account that he produced some records for is the  
15 Cathay Bank, which is allegedly still open and which only  
16 possesses \$500 as of the November 2022 bank statement that he  
17 produced. He has produced no new monthly statements since,  
18 despite our request for it. And this is not a bank where he  
19 allegedly needs to go to Hong Kong. He produced up to  
20 November, but he refuses to produce additional bank records.  
21 It is just very confusing why he would not produce those  
22 immediately upon the April 18 order.

23 Turning to your Honor's question, we don't believe at  
24 all that he needs to go to Hong Kong to obtain records. There  
25 is really no support for it whatsoever. The communications

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1 that were produced by Seiden between Mr. Qin and the banks, the  
2 banks say that he can obtain these records by doing a video  
3 chat function or other functions. There is a WeChat message,  
4 one of the very few that Mr. Qin produced, where one of his  
5 assistants says that he tried to collect records from one bank  
6 in Hong Kong and wasn't able to do so and says, Mr. Qin, you  
7 need to come do it yourself. I don't think that means that he  
8 needs to go to Hong Kong. It just means that his friend can't  
9 get the records for him.

10 THE COURT: I was wondering what that meant because I  
11 thought that was being offered to me as proof that he needed to  
12 go to Hong Kong, whereas I understood it as it might be more  
13 convenient for you to show up and do this than to use another  
14 method. I didn't see it as a restriction, but I will hear from  
15 respondents to tell me if they view it otherwise.

16 I will let you continue, sir.

17 MR. SANT: Your Honor, basically, what we are seeking  
18 here today is what we think is the minimum necessary relief to  
19 force Mr. Qin to comply with this Court's orders and to remedy  
20 his spoliation, withholding of records, in violation of this  
21 Court's orders.

22 Rule 37(b)(2)(C) mandates attorneys' fees for any  
23 order of contempt. But the reality here, your Honor, is that  
24 we all know that's not going to be effective in causing Mr. Qin  
25 to comply. This Court already in its April 18 order ordered

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1 monetary sanctions and Mr. Qin did not comply with the April 18  
2 order.

3 Also, Mr. Qin is not paying a judgment that is half a  
4 billion dollars. Any sanctions of attorneys' fees to him is a  
5 couple of days of interest on a judgment that he is not paying  
6 already. His whole point it seems to be to evade producing  
7 records that could allow collection on his judgment. I don't  
8 see how the fees can accomplish the goal of getting him to  
9 comply.

10 So that's why we have other relief requested, your  
11 Honor. First of all, we ask that this Court order seizure of  
12 Mr. Qin's devices. I would point your Honor to paragraph 38 of  
13 Qin's July 7 declaration that's attached to their opposition,  
14 where he "did not object to petitioners' intention to have a  
15 marshal collect it."

16 So this is not opposed, your Honor. And we brought a  
17 forensic specialist with us today, a Mr. Tino Kyprianou from  
18 Setec Investigations. He's available to formally collect any  
19 devices that Mr. Qin brought with him to court. And to the  
20 extent he did not bring devices to court, we would request this  
21 Court order the marshals to seize any phones, computers, or  
22 electronic devices that are not here today.

23 Your Honor kindly permitted me to summarize some of  
24 the key points in our briefs, and I will try to be very brief,  
25 as your Honor requested. If any of us were to try to present

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1 in a lecture, for example, the perfect example of a case  
2 requiring a contempt, or meriting a contempt finding, we might  
3 come up with what is before us today, which is: The Court has  
4 already found respondent violated the Court's clear orders; the  
5 Court has already found contempt was warranted but gave  
6 respondent another chance; respondent produced no new documents  
7 by this Court's deadline; respondent instead destroyed the very  
8 records this Court ordered produced; respondent has not paid a  
9 penny of a half billion dollar judgment, despite living in  
10 multiple penthouses and Long Island mansions; and this Court  
11 already found his claim of poverty "defies belief."

12 Those are the facts here. This Court ordered, as I  
13 mentioned, Mr. Qin to produce documents within three days. He  
14 produced no documents within three days. And that alone, if  
15 there was nothing else that happened, that alone merits  
16 contempt.

17 I will briefly respond to opposing counsel. They said  
18 that the April 18 order was merely requiring some kind of  
19 response by the 21st.

20 THE COURT: No, it was not.

21 MR. SANT: Then I will skip any other comments on  
22 that.

23 On page 10, line 16 to 20 of the April 18 order, this  
24 Court ordered production of "information about bank accounts,  
25 credit cards, and trusts controlled by respondent, as well as

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1 documentation of his income, property, and vehicles." Again,  
2 bank accounts, credit cards, and trusts, income and vehicles.

3 THE COURT: Sir, I hate to go back, but I am going to  
4 have to go back. Could you tell me, please, again where the  
5 citation that you read to me regarding the devices is located.  
6 It took me a moment to pull up the opposition in this case.

7 MR. SANT: It's in Mr. Qin's declaration.

8 THE COURT: What paragraph, please?

9 MR. SANT: Paragraph 38.

10 THE COURT: Thank you so much.

11 MR. SANT: He says that we know where the devices are  
12 located, which I assume he means his home. And he invites the  
13 marshals to collect it. The exact quote by Mr. Qin is "did not  
14 object to petitioners' intention to have the marshal collect  
15 it."

16 THE COURT: What I am understanding this to be, sir, I  
17 am understanding that, at some point in the past, Mr. Qin said  
18 to you, and it looks to be at his deposition that he said,  
19 here's where the phone is and you can have the marshal collect  
20 it, which is different than saying he brought it today and he's  
21 willing to give it up. I think I am reading that correctly.  
22 Yes, sir?

23 MR. SANT: Your Honor is correct. Obviously, we have  
24 no ability to order the marshals to do anything. That's why we  
25 are here today. We are asking your Honor to order the marshals

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1 to take the actions that Mr. Qin himself invited.

2 If I may continue. I just quoted from the April 18  
3 order. The topics were bank accounts, credit cards, and  
4 trusts, income and vehicles. Those were all your Honor's  
5 enumerated categories of documents, and Mr. Qin produced no new  
6 documents in any of these categories; not just by the 21st, but  
7 in the four months since this Court's order. No new bank  
8 accounts, no credit cards, no trust information, no income, no  
9 vehicles.

10 Mr. Qin has destroyed more than he has produced in  
11 each of these categories. Qin was given three days to produce  
12 all records, but he hasn't done it in four months.

13 Qin testified to receiving 300 million Hong Kong  
14 dollars in three separate bank accounts. And, sadly, it  
15 doesn't surprise us that those are the three bank accounts, or  
16 among the bank accounts that he has not produced any records  
17 for whatsoever.

18 In many cases, Mr. Qin and his counsel did not even  
19 seek records until after our January 9 premotion conference  
20 letter, and in some cases even after this Court's April 18  
21 order. I will direct the Court's attention to writing the  
22 banks in January after the premotion conference letter, and Qin  
23 e-mails his immigration counsel on April 28, a week after this  
24 Court's deadline for production.

25 Worse, Qin deleted and destroyed the very records this

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1 Court ordered produced up to and through the deadlines set by  
2 this Court. This doesn't just merit contempt, it frankly is  
3 contempt.

4 Mr. Qin spent a lot of time in his brief arguing that  
5 he has some kind of justifications for destroying records.

6 THE COURT: Well, there are a couple of arguments that  
7 are being made, and I am wondering, sir, whether you would like  
8 to address them now in this portion of the hearing or whether  
9 you want to let them be articulated by the defense before you  
10 respond to them.

11 For example, there is a suggestion that what you  
12 should have done was to try and seize assets that were  
13 available, that you should have taken efforts to get materials  
14 and information from third parties, including the third parties  
15 whose names you sought, things of that nature. There is a  
16 suggestion that there is more that you could have done, and yet  
17 there is almost -- and I am using this term colloquially --  
18 there is almost an exhaustion requirement before you can come  
19 in and seek contempt. So I would like you to speak about that.

20 Also, and, candidly, to my recollection for the first  
21 time, there seems to be the introduction of information about  
22 your clients' ties or not to the Chinese Communist Party.  
23 Again, I don't remember hearing about this at any point in the  
24 past two years until now, but if you would like to speak to any  
25 of those issues, I will hear from you now.

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1 MR. SANT: Your Honor, I don't think that these are  
2 worth responding to.

3 THE COURT: Okay. Then don't. I am not going to make  
4 you.

5 MR. SANT: If the Court has any concerns, we are happy  
6 to respond, of course, and we will be guided by the Court's  
7 directions.

8 The Court already pointed out just a moment ago that  
9 your Honor didn't hear any reference to the supposed Communist  
10 Party issue until now that this motion has been filed for  
11 contempt, and that says everything already. This is an  
12 eleventh-hour Hail Mary attempt to distract attention from his  
13 own misconduct.

14 THE COURT: I don't mean to chuckle, sir. I am just  
15 trying to figure out how many metaphors you can string  
16 together, the eleventh-hour Hail Mary.

17 MR. SANT: Your Honor, as we pointed out in our brief,  
18 this idea that he is afraid of China or that he is afraid of  
19 Hong Kong makes no sense. Before he came up with this new  
20 argument, in his deposition testimony he repeatedly talked  
21 about all his ties and importance in China; how he has  
22 important contacts, he can influence people. He talked about  
23 how he wished he had invested in Hong Kong real estate. If he  
24 is afraid to go to Hong Kong, these make no sense, these  
25 comments and statements that he made when he was filibustering

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1 during his deposition testimony. It is simply something that  
2 he has come up with now to try to distract the Court's  
3 attention, and I think it's quite transparent. But if the  
4 Court has any concerns, we will be happy to answer anything  
5 that the Court wants to know.

6 THE COURT: I appreciate the fact that you are letting  
7 me set your oral argument. I'm not sure that's the wisest  
8 move.

9 Earlier you said that one of the things you wanted was  
10 the seizure of his devices. I wrote number 1 next to it,  
11 assuming that there would be a number 2 and a number 3 coming  
12 on. You're not asking -- well, you are asking for attorneys'  
13 fees, and I understand why. I am not giving them to you just  
14 yet, but I understand why. You're not asking, as I understand  
15 it, for monetary sanctions. Your view is that they simply  
16 would not be coercive.

17 You want me to jail the man. And you want me to take  
18 certain facts in your favor. Do I understand that correctly?

19 MR. SANT: Your Honor, I agree, but I would put a  
20 twist on it. We don't actually want him to be incarcerated.  
21 What we would like for him to do is to comply with this Court's  
22 orders.

23 THE COURT: Okay. Among the things you have told me I  
24 can do is to detain the man. So I assume you're telling me  
25 that because that is in fact what you want. If you don't want

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1 that, if what you really just want are these factual findings,  
2 then tell me. I just want to know, as I am getting all of this  
3 information, as I prepare to speak to the back table, what is  
4 it that you want today from me.

5 MR. SANT: Your Honor, we have actually prepared a  
6 draft order, if your Honor would be willing to review it, which  
7 lays out exactly what we are seeking, but I can let your Honor  
8 know orally as well.

9 THE COURT: Please.

10 MR. SANT: First, it's mandatory that if the Court  
11 rules that Mr. Qin is in contempt, then there would be  
12 attorneys' fees. In addition, we would like to have his  
13 electronic devices, including his phones, seized so they can be  
14 forensically imaged and we can attempt to recover the  
15 information that Mr. Qin deleted and destroyed.

16 We ask that this Court incarcerate Mr. Qin until he  
17 complies with this Court's April 18 order, which set forth the  
18 documents that he must produce. And until he complies with  
19 this Court's April 18 order, and this Court's other orders,  
20 then he can be released.

21 We would be happy to set a status conference quickly  
22 after incarceration. We are not looking to have him stay  
23 incarcerated. What we would like to do is to force him to  
24 comply, which he clearly will not do --

25 THE COURT: According to his deposition testimony,

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1 there is some suggestion at least, and it may be puffery, even  
2 jail is not going to make him. I can shoot him and it wouldn't  
3 cause him to comply.

4 No, gentlemen, I am not asking you to do that.

5 So you are seeking incarceration.

6 MR. SANT: Yes, your Honor, until he complies.

7 THE COURT: If I may, just because I want to be sure I  
8 understand the requests.

9 You're asking me to take certain things as given, to  
10 find certain facts in your favor. If I do that, why do you  
11 need the incarceration? Also, if I do that, what are you going  
12 to do with them? And I am not saying that to be facetious. Is  
13 it the basis for a turnover petition that you would be making?  
14 Is it the basis for some sort of asset seizure? What happens  
15 if there is a third party who holds a different view and has  
16 this information? I am just trying to understand where we are  
17 going from today. I know what happens with detention. I know  
18 how that works. I am not sure I know what happens with respect  
19 to the factual findings you're asking me to make.

20 MR. SANT: Thank you, your Honor.

21 If I may, I will attempt to respond to the Court, but  
22 Mr. Smith here is actually the one who is --

23 THE COURT: I will wait for him. That's fine. Just  
24 know, everybody at the front table, someone is going to have to  
25 tell me that story, because I do want to understand.

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1 Are there other things you would like me to know, sir,  
2 before you turn over the reins to somebody else at your table?

3 MR. SANT: I think at this point, your Honor, if you  
4 permit, I will allow my colleague, Carol Lee, to discuss the  
5 deposition testimony and why that also requires adverse  
6 inferences.

7 THE COURT: Thank you.

8 Ms. Lee.

9 MS. LEE: Your Honor, besides the document spoliation,  
10 Qin also violated this Court's order compelling his deposition  
11 and requiring him to answer all questions. Mr. Qin's  
12 recalcitrance and lack of cooperation further supports an order  
13 of civil contempt and findings of adverse inferences. He  
14 claims that he has sat for over 20 hours of deposition  
15 testimony. But as this Court knows, at his deposition he  
16 refused to answer questions. He filibustered and he gave  
17 conflicting answers to questions that he did answer.

18 So, we are not getting any answers to the most basic  
19 questions, such as where he lives, despite his claiming that he  
20 has sat for so many hours at depositions. We are also not  
21 getting any information as to where he got all this money to  
22 pay for his lavish lifestyle.

23 THE COURT: Is that really the question that you wish  
24 to ask? You have a judgment, you wish to have assets to  
25 satisfy the judgment. I would think your focus is simply on

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1 what assets does he have today and what assets -- and I am not  
2 saying this happened -- he may have had but transferred to  
3 other people. Is that correct?

4 MS. LEE: That's exactly correct, your Honor. We have  
5 been trying to get that information from Mr. Qin, but we are  
6 not getting any answers from him whatsoever at his depositions.

7 So, basically, his depositions created more questions  
8 than answers. And because he has not been forthcoming with his  
9 knowledge about various entities with which he associated, we  
10 can only assume that the various dealings involving those  
11 entities are a sham.

12 THE COURT: Well, that is what you are asking me to  
13 find. I am not sure I am there.

14 I am correct, am I not, that his wife or former wife,  
15 for ease of reference I am calling her his wife, is going to be  
16 deposed in the month of October? Is that correct?

17 MS. LEE: We have ordered her deposition to happen  
18 before October 5, and currently we don't have a set date for  
19 her because of her supposed travel to Europe.

20 THE COURT: My question is, do you believe that there  
21 is any utility in waiting until her deposition? Because I was  
22 told, for example, that she may be in possession of certain  
23 immigration records. Should I wait to hear what she has to  
24 say, and if you believe not, tell me why.

25 MS. LEE: Your Honor, we believe we don't have to wait

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1 for her deposition because she is not -- we served a document  
2 subpoena on her more than two months ago, and as of today we  
3 still have not received a single page of documents from her.

4 THE COURT: You have not received documents. Have you  
5 received objections from her attorney?

6 MS. LEE: We have received written responses and her  
7 responses have represented that she will be producing the  
8 documents by mid-July, so that was already a month and a half  
9 ago, and as of today we still have not received a single page  
10 of documents.

11 THE COURT: When was the last time anyone at the front  
12 table had a conversation with the wife or her counsel regarding  
13 the production of documents?

14 MS. LEE: If the Court permits, I will let Mr. Smith  
15 answer this question.

16 THE COURT: Yes. I just wondered if anyone reached  
17 out to counsel after mid-July to say where are these documents.

18 MR. SMITH: Yes, your Honor, we did. We spoke with  
19 Angus Lee who represents Ms. Liu. Shortly after your Honor  
20 temporarily postponed her scheduled deposition that had been  
21 ordered and then postponed, we said nothing, well, nothing in  
22 that order stops the necessity for producing documents under  
23 the document subpoena. After that they said that they would be  
24 planning to assert the same grounds upon which they asserted in  
25 sealed submissions to your Honor, so we are not privy to them,

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1 in terms of refusing to produce documents. We said that that  
2 was not appropriate, and followed up recently and have said,  
3 now that the deposition has been scheduled, and no relief has  
4 been sought or granted with respect to the documents, that they  
5 should produce the documents immediately.

6 In fact, just this week we have had a series of  
7 back-and-forths with Mr. Ni, and we have told him that if he  
8 does not produce documents, we will have to unfortunately bring  
9 a motion to compel, which you may see. He has represented to  
10 us that he needs more time. He has not said categorically, and  
11 that's why it has been difficult, in terms of coming to your  
12 Honor to seek relief, because we have been getting a bit of  
13 back-and-forth from him saying, well, we are not sure what we  
14 are going to do, I need to consult with her other lawyers.

15 In fact, one of the last communications we received  
16 from Ms. Liu's counsel said, well, her deposition isn't going  
17 to take place until early October so we have plenty of time.  
18 And we responded and made clear, No, these documents are  
19 already a month and a half overdue; we refuse to wait for  
20 another month and a half. And that communication was from us,  
21 I believe yesterday, and still unresponded. So you likely will  
22 see a motion from us with respect to that.

23 So, to answer your question that you posed to my  
24 colleague, should we wait to hear from Ms. Liu, well, we  
25 believe that we are going to be getting the same thing, and we

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1 don't want to wait until October, to then not have documents,  
2 to have evasive answers. They have already provided  
3 conflicting information through either informal or  
4 communications such as her responses to the document requests.  
5 For instance, she says that Mr. Qin did in fact create these  
6 trusts and has the documents. He says, she should have the  
7 documents. So we expect that she is going to say, I don't have  
8 the documents.

9 THE COURT: But there also has been a suggestion, even  
10 if they had responsive documents, you're not getting them  
11 because they are going to assert the same grounds that were  
12 asserted to me in an *ex parte* submission.

13 MR. SMITH: That's exactly right. The mere fact that  
14 you have allowed the deposition to go forward does not mean  
15 that we are going to hear "take five" after every question, or  
16 plead the Fifth.

17 So we don't know what we will get from her. So that's  
18 a more fulsome response to why this Court should not wait.

19 THE COURT: Just so I understand, there is a little  
20 bit of a stalemate here, correct? Ms. Liu's counsel is saying,  
21 well, we were not sure we had to produce anything, but we are  
22 not moving to quash. And your view is, there needs to be  
23 production. Each of you thinks the other needs to make an  
24 application to me.

25 MR. SMITH: Correct with one caveat. We have said,

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1 either confirm you are going to produce or we will file this  
2 motion. So you will get a motion from us. We are not  
3 satisfied with that stalemate. We obviously were preoccupied a  
4 bit with this application.

5 THE COURT: Also fair. It sounds like you're telling  
6 me that another reason why it's not worth waiting is that you  
7 can wait until her deposition, you're not getting any  
8 documents, you may not get any answers either.

9 MR. SMITH: Correct.

10 And also, your Honor, documents that we believe that  
11 she has that we want to get are not the full universe of  
12 documents. For instance, we don't expect her to produce the  
13 Cathay Bank records, which we know he has. Again, that is  
14 documents that we have not received. The last document we  
15 received in that bank account was in November. And during our  
16 April 20 meet-and-confer with counsel, we made clear that we  
17 were requesting up-to-date documents from the Cathay Bank. So  
18 they can't come here and say, we didn't know you wanted us to  
19 refresh that. That has been expressly communicated to counsel  
20 and still we have heard nothing. There is no reason why. He  
21 should be able to produce those this afternoon.

22 Coming back to -- I'm sorry.

23 THE COURT: It's fine if there is something else you  
24 want to tell me. At some point I am going back to Ms. Lee,  
25 correct?

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1 MS. LEE: I will turn it over to Mr. Smith.

2 THE COURT: I will hear from whoever has the  
3 information.

4 Mr. Smith, please continue.

5 MR. SMITH: I wanted to address the issue that you had  
6 raised with respect to, well, if I grant you adverse  
7 inferences, then you don't need incarceration, or vice versa.

8 THE COURT: I have folks here who at least can  
9 facilitate the process of detention. It's just a question of  
10 whether I ask them to or not.

11 MR. SMITH: And the reason we are asking for both is  
12 this. We know that he has destroyed documents, and we believe  
13 that those documents would be favorable to us, and therefore we  
14 are entitled to an adverse inference. And we know that he has  
15 not produced documents that would be helpful to us, but he is  
16 not going to produce them. So your granting adverse inferences  
17 to us today will not help us get that additional information  
18 which will be helpful to enforce our judgment.

19 So, there are two sets of relief, but they are not  
20 mutually exclusive. They are actually specifically fashioned  
21 to address two different types of issues. And that's why we  
22 think incarceration is really the only way that we will get him  
23 to turn over documents and information that there is no reason  
24 why he should not have produced to date. We know that they  
25 exist. And in certain cases we know they exist because he has

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1 denied having certain information in written responses to  
2 discovery requests, and then we discover at his deposition that  
3 he does have -- for instance, had an aircraft or current cars  
4 that he owns in China. These are all things that up until one  
5 of his more recent depositions he was saying he has no records  
6 with respect to because he doesn't have any of those things.  
7 Well, now we know he does. And the only way to get him to  
8 comply with your order is incarceration. Monetary damages  
9 doesn't mean anything to him.

10 THE COURT: Just on the point of destroying documents,  
11 obviously, those are very serious allegations, and I remember  
12 there has been a discussion about destruction of phones,  
13 repeated destruction of phones, and I guess that is one area.  
14 I know there was a rather inflammatory video -- pardon the  
15 pun -- of lighting money on fire.

16 I want to make sure I understand the basis for your  
17 claim that he has destroyed documents. Is it the WeChat images  
18 that he has deleted?

19 MR. SMITH: It is his own testimony. And we have  
20 multiple examples.

21 THE COURT: Let me hear what you believe has been  
22 destroyed. Again, there is some suggestion from the defense  
23 that maybe these things have been overstated, maybe there are  
24 statements -- for example, the destruction of a phone doesn't  
25 necessarily destroy all of the information within the phone.

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1 MR. SMITH: Correct. We heard for the first time that  
2 the documents that they actually produced to us were off of the  
3 damaged phone, in the opposition to contempt. It really  
4 doesn't matter which phone he gets it off of. We just want the  
5 information.

6 So we were reporting what he testified to. In  
7 response to our questions about information that he may have on  
8 a phone, his response was, I smashed that phone. It's a  
9 reasonable inference that we thought he was saying that he had  
10 destroyed that device. Then he said he had it. So we still  
11 want information off that. That's not the basis for the  
12 destruction. It's the actual deletion of the e-mails.

13 Your Honor referenced their attempt to downplay the  
14 significance of what they have and have not produced. Frankly,  
15 I think that we have downplayed the significance. Because he  
16 has an e-mail address. We have not received a single e-mail.  
17 He has testified that three of his assistants have access to  
18 this e-mail account. We have not received any communications  
19 that they sent using this e-mail account on his behalf or  
20 anything else.

21 THE COURT: He has an e-mail address from which you  
22 have received not one single e-mail?

23 MR. SMITH: Not one single e-mail.

24 THE COURT: And it's an e-mail that his assistants  
25 have access to? When you say that, do you mean that his

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1 assistants contact him at that e-mail address or that they are  
2 able to send e-mails under that e-mail address?

3 MR. SMITH: If they have access to it, I assume that  
4 they send e-mails on his behalf. And it's his testimony that  
5 we are relying on. So we asked him about his e-mail address.  
6 Why haven't you produced e-mails? I don't have a computer. I  
7 don't use it. Why do you have an e-mail address? My  
8 assistants use the e-mail address. Which assistants use it?  
9 He identified three.

10 By the way, your Honor, this is all detailed in  
11 appendix 3, and why we think that there is an adverse  
12 inference, who these people are, what they have access to; and,  
13 notably, this was essentially not addressed or referenced in  
14 their opposition, tellingly I would add. But if you turn to  
15 page 3 of that, it's appendix 3 to the Carol Lee declaration.  
16 It's at ECF 176-14.

17 So, on page 3, we have an excerpt there in support of  
18 this. This is his -- actually, it was in his supplemental  
19 declaration. So it was a written response. And he says, "To  
20 clarify, I do have an e-mail address." And he lists his e-mail  
21 address. "To the best of my knowledge, Shirley Wen, Kevin  
22 Wong, and Yong Zhang have access to my e-mail account." And I  
23 believe there is also testimony, too, that my colleague has  
24 found.

25 MR. SANT: If the Court would like to hear, I can read

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1 the deposition testimony.

2 THE COURT: It's not necessary. Thank you.

3 MR. SMITH: So, your Honor, getting back to the point  
4 that I am trying to make, they say this is all irrelevant, what  
5 does it matter that he deleted some WeChat communications with  
6 people that he calls assistants, but really they are just  
7 friends because he doesn't pay them, the same way that he  
8 doesn't have any money. These people arrange for his hotel  
9 rooms and arrange for other things. One of the friends or  
10 assistants that they produced, it's either four or one page.  
11 Either way, this is the person that he was communicating with  
12 respect to tax returns. Also, there was another one where he  
13 sent his consulting agreement to them.

14 So, the whole universe of communications that we have  
15 received is set forth in a chart in paragraph 38 of the Lee  
16 declaration. And it's ten pages from one person, four pages,  
17 two pages, and then a single page from three other people, two  
18 of which are his assistants. Not a single e-mail and a  
19 spattering of this. And just to be clear, we asked for  
20 communications over a five-year period. So he didn't delete a  
21 communication here and a communication there. And these are  
22 screenshot as well.

23 So, the reason that we know he deleted information is  
24 because he told us that. We assumed that he deleted something.  
25 But I don't think he deleted everything except for these three

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1 things. That's why we want the devices seized and be scanned,  
2 not only to see if they can recover any deleted information,  
3 but also to see if there are communications that haven't been  
4 produced yet that would otherwise be responsive. Because the  
5 representation that they make that he deleted a few, what he  
6 characterizes as irrelevant communications doesn't make sense  
7 when he produces one page from a person that is his assistant,  
8 that has access to his e-mail account, that deals with his  
9 taxes, that he communicated with him with regard to his  
10 consulting agreement, and there is only one page. He deleted  
11 them all.

12 So, that's my response to their argument that we are  
13 overstating this. I think we are understating the complete  
14 derth of any real information that has been produced to us.

15 They also argue that simply because these assistants  
16 have access to his e-mail account does not mean that they would  
17 likely communicate, quote, regarding Qin's financial situation  
18 and major transactions. This is at page 24 of their  
19 opposition. But that begs the question: Then who does?  
20 Somebody has to. Mr. Qin doesn't go through life for the last  
21 five years doing big business transactions without some  
22 communications related to those assets and transactions and his  
23 holdings. We have nothing. And we know it's either out there  
24 or he has deleted it. And the two major remedies that we are  
25 seeking address both of those.

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1 THE COURT: Let me speak with Ms. Blecher. Thank you  
2 very much.

3 MS. BLECHER: Your Honor, would you just like me to  
4 begin?

5 THE COURT: Please. And if it's easier to speak from  
6 the podium, you're welcome to do so.

7 MS. BLECHER: Your Honor, maybe the best place to  
8 start is where your Honor started, which is to give you the  
9 current posture with respect to respondent's position.

10 THE COURT: Yes.

11 MS. BLECHER: I don't want to say that the position is  
12 that there is nothing else possible that could ever be  
13 produced. There are questions here regarding who has  
14 possession of the relevant documents, what exists, and to what  
15 extent that Mr. Qin, who has been trying diligently to obtain  
16 materials from certain third parties, is able to come into  
17 possession. If that's the case, he would be very happy to  
18 produce them.

19 Just to touch on a few specific items. With respect  
20 to the Cathay Bank account, that account is still open. I  
21 guess I will just fall on my sword for more recent monthly  
22 statements. Mr. Qin has no objection to producing those.

23 THE COURT: Then why are we here? How difficult could  
24 it be? Are you suggesting, for example, that petitioners  
25 didn't tell you they wanted up-to-date statements? I find that

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1 difficult to believe given the ferocity in which they have  
2 reached out to me. It would be very shocking if you said I  
3 didn't know until today that they wanted more recent  
4 statements.

5 MS. BLECHER: Your Honor, what I would say is that  
6 there had been an earlier production, and I think that in the  
7 briefing and the discussion of numerous items that were at  
8 issue in the first motion, that were requested in the  
9 supplemental requests, that there was a lot of focus on a lot  
10 of items that had not been produced and that Mr. Qin could not  
11 get access to that we were trying to get access to. And with  
12 respect to the Cathay Bank statements, that is the one account  
13 that remains open, there was just an oversight in terms of  
14 bringing it up to date for those additional three months.

15 THE COURT: I guess why I find that so difficult to  
16 believe is that you're being effectively besieged by  
17 petitioners' counsel. They are filing all of these motions.  
18 They are asking for your client to be remanded today at the end  
19 of this proceeding. And I would have thought that if a lot of  
20 your answers were, we don't really know what information there  
21 is, and we can't go to China to get this information, we can't  
22 go to Hong Kong to get this information, or this is information  
23 in the possession of an estranged wife and we can't get it from  
24 her, you have the banks records, I would have thought you would  
25 have at least tried to make a good faith showing, here are bank

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1 records. We don't have them. You haven't produced them. I  
2 just find it difficult to believe that you would sit on actual  
3 responsive documents, but we are here.

4 I also don't find especially satisfactory this idea  
5 that there are questions regarding who has possession regarding  
6 what exists and regarding what extent your client can have  
7 access to these documents. We have been discussing this since  
8 the beginning of the year. We had a full-throated, complete  
9 discussion about this in April, and there is nothing but  
10 excuses. So I find it impossible to believe that folks who  
11 didn't know until after my April order, which used words like  
12 "contempt," that actually your client didn't have the ability  
13 to access these materials. So please tell me why I should not  
14 be as skeptical as I currently am about the opposition  
15 submission.

16 MS. BLECHER: Your Honor, there are a lot of  
17 categories of documents at issue, and I was trying to address  
18 the simple ones first. There are documents, such as the  
19 documents from the banks in Hong Kong. Those accounts were  
20 closed by the banks. They were not closed by Mr. Qin. And he  
21 tried to reach out and obtain those documents. There has been  
22 a big point of contention in this case regarding Mr. Qin's use  
23 of the word "assistant." He has provided testimony numerous  
24 times that these people, he refers to them as assistants  
25 because they are people who are helping him with various

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1 things.

2 THE COURT: I have also seen the petitioners'  
3 responsive reply challenging the lost-in-translation argument  
4 you're now making to me.

5 Let me ask this question. Right now today how much  
6 money is in the Cathay Bank account? Is it \$500?

7 MS. BLECHER: I don't have possession of the statement  
8 at the moment.

9 THE COURT: You must have seen it at some point.

10 MS. BLECHER: I actually have not, your Honor. The  
11 point is, the discussion I had earlier with Mr. Qin is, we have  
12 to continue to update that production and can you give us those  
13 bank statements so that we can update it, and he has no problem  
14 with doing that.

15 THE COURT: Please speak to your client and find out  
16 how much money today is in the Cathay Bank account. You can  
17 walk right over to him.

18 MS. BLECHER: Mr. Zhang will have to do it because I  
19 do not speak Chinese.

20 THE COURT: Someone do it.

21 THE DEFENDANT: A few thousand dollars. I have not  
22 used this account for so long.

23 THE COURT: In November of 2022 there was  
24 approximately \$500. There is now a few thousand dollars in  
25 that account?

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1 THE DEFENDANT: A few months ago I was paid a fee  
2 ending a contract and release me. That's the last payment.

3 THE COURT: He received a payment to complete a  
4 contract or to release him from a contract?

5 THE INTERPRETER: Yes, release him, like break off the  
6 contract.

7 THE COURT: I see. Approximately how much was that  
8 payment?

9 THE DEFENDANT: They deduct from the credit card they  
10 give to me that I spend over the limit. After that deduction,  
11 probably a few thousand dollars.

12 THE COURT: I am not sure what was just said. You're  
13 saying a credit card debt was paid, and then in addition to  
14 that there was several thousand dollars?

15 THE DEFENDANT: So we end the contract at that time  
16 and they gave me a consulting fee, but they deduct the amount  
17 that I spent over the limit of the company credit card  
18 allowance, and there is a remaining few thousand dollars and  
19 that was the amount that was passed into the account.

20 THE COURT: How much was the consulting fee and how  
21 much was the overage on the credit card?

22 THE DEFENDANT: They pay me a consulting fee about a  
23 little bit over \$4,000 per month. And the reason for  
24 overspending on the credit card limit is because there was some  
25 important clients coming domestically from China, and we had

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1 two to three meals and probably spend about, like, \$10,000, and  
2 that was over the limit.

3 THE COURT: Did you say \$4,000 per month on the  
4 consulting fee or a different number than that? I wanted to  
5 make sure I heard you correctly.

6 THE DEFENDANT: 4,000 per month.

7 THE COURT: I see. So now, what is left from the  
8 payment for the termination of that contract is at the Cathay  
9 Bank account?

10 THE DEFENDANT: Yes. And I only have this one bank  
11 account.

12 THE COURT: That's all the money he has in the world,  
13 all of the cash to which he has access in the whole world?

14 THE DEFENDANT: Today, yeah. And all the other  
15 accounts were closed.

16 THE COURT: Ms. Blecher, how is your client living?  
17 Please don't tell me on the terminated \$4,000 on the  
18 consultancy agreement.

19 MS. BLECHER: The consultancy fee was discussed during  
20 Mr. Qin's deposition. There seems to be, based on the way that  
21 petitioners have copied or spliced a lot of his testimony, Mr.  
22 Qin has testified consistently during his deposition that he  
23 does not have an address. Instead, I do believe it is  
24 contested that he comes from a background where, at least at  
25 one point, he was very politically well connected in China. Of

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1 course, he used to have quite a bit of money, and during that  
2 time he developed relationships with various individuals in  
3 China and elsewhere. And since he has fallen on hard times  
4 financially, he has testified that it's effectively a situation  
5 where he is kind of bouncing from place to place to place,  
6 sometimes it's with a friend who lives on the Upper East Side,  
7 there is a friend who lives in Battery Park, there is a friend  
8 who lives in Flushing. This was the subject of deposition  
9 testimony.

10 THE COURT: Please understand I have read the  
11 deposition testimony. I just find it incredible. There was  
12 some suggestion at some earlier point in this case that he had  
13 some ownership interest in these properties. Now I am told  
14 that he is living on the kindness of strangers, or the kindness  
15 of friends. I find that just so difficult to believe.

16 MS. BLECHER: Your Honor, I think that it's important  
17 to take into account, I certainly don't have a relevant  
18 background in certain of the circles that Mr. Qin -- the  
19 cultural background, and I certainly don't have friends that  
20 have the kind of resources that Mr. Qin has. So it may seem  
21 that being destitute, when you have a lot of wealthy friends,  
22 is obviously not as rough of a situation as it would be for a  
23 lot of us, including me, if I were to find myself in that  
24 situation. Some of these people are friends. He also does  
25 have children who live in a house on Long Island.

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1 THE COURT: But he tells me he visits his wife, but he  
2 doesn't have the temerity to ask her for the documents that she  
3 is keeping at that house. That makes no sense to me either.

4 MS. BLECHER: Your Honor, Mr. Qin has asked her on  
5 certain occasions for the documents. To be clear, it's a very  
6 large property and Mr. Qin testified that he does not stay in  
7 the main house. He typically stays out by the pool or in the  
8 sauna. So these materials are in the house, and petitioners'  
9 counsel had even suggested that because he might be able to go  
10 inside the house and grab documents, that this would somehow be  
11 considered a practical ability to access for discovery  
12 purposes. Ms. Liu has had some serious health issues in recent  
13 time, and so he definitely has stated during deposition that  
14 there have been occasions where, because of these health  
15 issues, or because of particular flare-ups in interpersonal  
16 problems, he did not want to ask her at that particular time  
17 but will try to ask her again.

18 On the whole, and for better or for worse, Mr. Qin  
19 just engaged in a real-time practice in the conduct of his  
20 financial affairs that was not subject to detailed record  
21 keeping, was not especially sophisticated, was done via a lot  
22 of informal oral arrangements. It appears to be the case that  
23 Ms. Liu is the opposite in that regard. She seems to have  
24 quite a few documents, and that kind of left Mr. Qin in a  
25 frustrating position because he wants to comply with the

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1 Court's order and he wants to provide all the responsive  
2 information that he has.

3 He did used to have quite a large number of assets.  
4 As your Honor is no doubt aware, he kind of got looped into an  
5 award that really was a contractual dispute between his company  
6 and petitioners. He ended up on the hook for that and he has  
7 since been under a deluge of creditors. The underlying award  
8 in this case is not the only legal issue that befell his  
9 company.

10 So he has been under a deluge of judgment creditors.  
11 He had to dispose of the assets. Mr. Qin submitted a  
12 declaration on this earlier in the case. The vast majority of  
13 his net worth was tied up in the stock ownership of these  
14 companies. He did receive significant dividends in 2017 and  
15 2018, which petitioners referred to earlier, these hundreds of  
16 millions of Hong Kong dollars that he had, and he did freely  
17 spend that money during that time. And he did testify that he  
18 had to get rid of a lot of the things that he bought, including  
19 the plane and the boat, because he had stock that was worth a  
20 lot of money, and then the assets of his company, he has  
21 testified, or he has stated in the declaration, and argued this  
22 in the arbitration proceeding, that somebody who worked for  
23 petitioners caused the value producing assets of his company to  
24 be stripped from his company, leaving him with a shell entity  
25 that was worthless. And then that same petitioner showed up

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1 and asked to have shares bought back that were worthless  
2 because all the movie theaters that were owned by his company  
3 had been effectively stolen from the company.

4 THE COURT: That was an argument rejected by the  
5 arbitrators.

6 MS. BLECHER: Your Honor, I believe the reason the  
7 arbitrators rejected that argument was because it concerned the  
8 parent company who was not a party to the proceeding.  
9 Certainly we are not here to relitigate the subject matter of  
10 the proceedings. It's not an appropriate basis for revisiting  
11 it. I only bring it up because the point there is, what assets  
12 does Mr. Qin have and what records does he have? And  
13 petitioners have continued to point to the fact that at one  
14 point he did have a significant amount of money to paint him as  
15 someone who is very financially sophisticated, and someone who  
16 must therefore be hiding assets and documents, and must have  
17 all these records, when the reality is that Mr. Qin does not.

18 He testified to this during deposition, that he does  
19 not have a lot of education. He grew up in a military family  
20 and he married into a government family, developed political  
21 connections, which kind of put him on a path to amassing for  
22 some time a large amount of wealth. But that did not bring  
23 with it a financial sophistication or the sudden sense to start  
24 keeping detailed financial records, or even doing things like  
25 having contracts translated into Chinese before he signed them.

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1           So the way that petitioners have described --

2           THE COURT: The problem with what you're saying to me  
3 is, first of all, that you preface a lot of the facts by saying  
4 "respondent has testified," which doesn't necessarily mean that  
5 is the fact. When you read the deposition in its totality, it  
6 is internally inconsistent, and not all of that can be ascribed  
7 to problems with the translation.

8           The difficulty that I have is that your client said to  
9 me in a conference that, now that he understood my orders, he  
10 would abide by them, but then he didn't. Your client has said  
11 a number of things, but then they just haven't come true. And  
12 it is also distressing to get new arguments in connection with  
13 the opposition that I have never heard in two years of having  
14 the case. So I am trying very hard to listen to the arguments  
15 that you're making to me, but they seem at times outweighed or  
16 undermined by the very statements your client has made at his  
17 deposition.

18           MS. BLECHER: Your Honor, I do believe that there are  
19 some translation issues. Again, I do not speak Chinese, but  
20 that's my understanding, is that some things either got lost in  
21 translation -- not because the translation was bad, but because  
22 of the way Mr. Qin talks may not be -- or the background that  
23 he comes from when he is talking about certain things do not  
24 necessarily translate.

25           For example, I had mentioned earlier, your Honor, the

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1 issue of the word "assistant." And you mentioned in the reply,  
2 I guess it's an expert affirmation. Again, I am not in a  
3 position to comment on the linguistics of the word, which I  
4 believe is *zhuli*. But the issue here is not the linguistics.  
5 The issue is, what does Mr. Qin mean when he uses a particular  
6 word and what are the facts? The individuals that he describes  
7 as assistants throughout his deposition --

8 THE COURT: One moment, please. I am asking your  
9 client to turn the microphone away so I don't hear the  
10 simultaneous translation.

11 Please continue.

12 MS. BLECHER: He described a number of individuals;  
13 they were the subject of one of the attachments for information  
14 to the original sanctions motion. Individuals that are  
15 identified as assistants include a 77-year-old man who owns a  
16 series of nightclubs in Singapore. There was another  
17 businessman who owns a jewelry store. Petitioners claim there  
18 must be responsive information from Ali Weng, because Ali Weng  
19 communicated with investors in the Lido nightclub. One of  
20 those investors was Ali Weng. These are people who have  
21 significant means and their own businesses. And whether it's  
22 consistent with proper linguistic practice or not, when Mr. Qin  
23 is using that word, what he is trying to say is, I need help  
24 with a certain thing and there are people who I can trust to  
25 reach out to who will help me with a particular issue.

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1           So, the idea that these people are paid assistants, or  
2 employees of Mr. Qin, that are somehow hiding information, or  
3 that would be in possession of all of this financial  
4 transaction information that petitioners believe exist, based I  
5 am not really sure on what, they just assume that it must  
6 because he had significant assets at one point, these people  
7 are not his employees. Again, they are friends.

8           And I certainly do not run in circles where I can get  
9 the kind of help that Mr. Qin has stated that he is able to  
10 get, but I also do not have the background, the political  
11 connections, and I certainly haven't spent the last 20 years  
12 giving money or helping people out with various situations. So  
13 when Mr. Qin is saying that he has developed these  
14 relationships that allow him to ask somebody, can I stay at  
15 your house, or can you help me get dinner, or can you foot the  
16 bill for a hotel, it may not seem realistic to a lot of people,  
17 but he did consistently testify about these things.

18           And to the extent there are issues with consistency in  
19 the transcripts, I will say the January 30 deposition and the  
20 April 24 deposition were almost exactly the same, in terms of  
21 the questions and subject matters that were covered, to the  
22 point that at one point Mr. Qin said, you asked me this last  
23 time, you asked me this last time, and petitioners' counsel  
24 said, well, I am just checking to make sure what you said was  
25 accurate. And the answers were the same from deposition to

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1 deposition.

2           So, for the most part, the statements that Mr. Qin  
3 made with respect to who lent him money on a particular  
4 occasion, who he had a phone conversation with, stayed the  
5 same. The discrepancies that petitioners have pointed out  
6 include things like the fact that Mr. Qin said at one point, I  
7 don't have someone's contact information, and at the deposition  
8 he pulls out his phone and he has the contact information.

9           There are two reasons why that is the case. The first  
10 is that there were a handful of instances where Mr. Qin  
11 actually went out of his way to ask a mutual friend for the  
12 contact information of someone he did not have it for so that  
13 he could do a better job of complying with your Honor's order.

14           The other reason, and this is also a misstatement that  
15 petitioners make in their papers, is Mr. Qin did say at his  
16 deposition on a handful of occasions, I don't remember this  
17 person's name. And what he was saying in each of those  
18 excerpts is that in Chinese, or at least with the people that  
19 Mr. Qin interacts with, it's common to use honorifics or  
20 diminutives, such as boss, president, or this word xiao, which  
21 I understand means little, to use that before someone's name.  
22 And so you refer to someone as Boss Cao or Boss Han instead of  
23 by their first name. So when he sees a name like Cao Ging, he  
24 doesn't immediately recognize that Cao Ging is the same person  
25 that he knows as Boss Cao.

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1           So, at his deposition he says, I don't recognize, I  
2     forget this person's first name, but he knows who is being  
3     spoken about, but he may not have recognized the name on  
4     petitioners' request, and he may not have had the same name on  
5     his phone when he's looking for a person's name. So there were  
6     a handful of instances where it became clear to him during the  
7     deposition, based on context, Oh, the person I thought was Boss  
8     Cao is actually Cao Ging. And now he is able to look at his  
9     phone and provide that information. And he did take his phone  
10    out numerous times during the deposition, and he was handed a  
11    piece of paper and he wrote down all the contact information  
12    for these various individuals.

13           So, things like this that are described as  
14    discrepancies between his interrogatory responses, or between  
15    one day of testimony and the next, are actually reflecting a  
16    change in the information that he has or in his understanding  
17    of the information that's being sought.

18           THE COURT: Let's talk, please, about the issue of  
19    document destruction.

20           According to petitioners, your client has admitted to  
21    deleting WeChat messages and e-mails. Is that true?

22           MS. BLECHER: Your Honor, in the abstract, he has  
23    deleted in his lifetime WeChats.

24           THE COURT: Including after this case was filed.

25           MS. BLECHER: After this case was filed, Mr. Qin did

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1 delete texts involving this individual Coco Jeung who was  
2 raised -- he was messengering with her during the January 30  
3 deposition. It was a personal matter, and he apparently was  
4 embarrassed by the nature of her work or something that she had  
5 done, and he deleted her completely from his phone because he  
6 didn't want to interact with her anymore. So he did do that,  
7 that did take place, he testified, a few days after the January  
8 30 deposition. So it did not occur after the issuance of this  
9 Court's order. It did not happen after the written demand from  
10 petitioners for that information.

11 Overall, however, there is an issue, when you're  
12 dealing with spoliation, alleged spoliation and destruction of  
13 evidence, with respect to whether there is an obligation at the  
14 time the documents are destroyed. So what Mr. Qin testified to  
15 is that throughout his life he has not necessarily maintained  
16 all the chats that people send him, or text messages that  
17 people may send him on a given occasion.

18 He did testify that in May 2022, he had an issue that  
19 I believe involved something that he understood to be that the  
20 CCP had hacked his phone, or he believed that something strange  
21 had happened to his phone, and there was also news regarding a  
22 relative of his that was sentenced to death in China, and so he  
23 stopped using WeChat. He had deleted messages and stopped  
24 using WeChat because my understanding is that the Chinese  
25 government monitors it and he did not want to be communicating

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1 with them over that app.

2 He did also say, though, as a general matter, and  
3 consistent with his practice historically, he doesn't do a ton  
4 of texting to begin with. He said that he does a lot of  
5 communication by phone; and particularly since May 2022, that  
6 he was trying to do all of his communication by phone because  
7 he did not want his messages being tracked.

8 And so, when your Honor issues an order saying,  
9 produce all these chats, there is a question of how many  
10 existed in the first place, but some have long been deleted for  
11 reasons completely unrelated to the litigation. The Coco Jeung  
12 texts are their own issue, and Mr. Qin had his own personal  
13 reasons for doing that. And surely it's questionable why a  
14 person he was trying to have dinner with on a given night is  
15 relevant to the litigation.

16 THE COURT: By the same token, it was so important  
17 that he had to actually, in the middle of the deposition -- and  
18 please don't say during a break -- when the deposition resumed,  
19 he had to engage in communications with her and then the  
20 deletion of those communications. You can say it's not  
21 relevant. I wonder why it was relevant enough that he  
22 interrupted his deposition to do it.

23 But you're saying, since this litigation was filed,  
24 the only messages he has deleted are related to Coco Jeung?

25 MS. BLECHER: Coco Jeung is the individual. That is

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1 my understanding.

2           Petitioners have repeatedly invoked this smashed  
3 phone. And Mr. Qin testified, and I can read the testimony,  
4 that the phone was still intact, you could still download data  
5 off of it, and that it was not damaged. That's at 665, from  
6 20-25. He said, "This is the only method I can use in the  
7 United States. However, I can download information from the  
8 phone that I smashed. It was just a little smashed. It  
9 wasn't, like, destruction of the phone."

10           THE COURT: So when he said several hundred pages  
11 earlier, "I probably misspoke yesterday. I threw it away. I  
12 smashed it. I have a habit of smashing my phone. I think I  
13 have probably smashed more than ten phones in my entire life.  
14 I smashed the phone, after my first deposition, of course,"  
15 what do I make of that?

16           MS. BLECHER: Your Honor, I believe it's the same  
17 phone that's being discussed. He believed it had been hacked  
18 and he threw it at the wall. He said he was suddenly unable to  
19 make outgoing calls. He thought it was just tied to some CCP  
20 monitoring of the phone.

21           THE COURT: But there is disconnect. You have been  
22 telling me that smashing the phone was a reaction to his  
23 concern about it being hacked, but I shouldn't worry because he  
24 is able to access everything in any event despite the phone  
25 being smashed. I am not sure which it is.

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1 MS. BLECHER: Your Honor, it depends on what the  
2 question is. If we are dealing with an issue of spoliation of  
3 evidence, there was no spoliation of evidence. If the issue is  
4 the contempt and the noncompliance with an order, the  
5 destruction of the phone did predate -- the smashing of the  
6 phone did predate your Honor's order. He did testify that he  
7 did it about two months prior to the April 24 deposition. And  
8 he also testified that he understood the importance of the  
9 Court's order, and that he would adhere to it, and that he  
10 would not -- as counsel explained this to him as well, that  
11 because there had now been a court order, that he had to take  
12 it more seriously, and not just in a fit of anger or  
13 frustration throw the phone in a way that might cause damage to  
14 it. But for spoliation purposes, there is no indication that  
15 what he did was designed or done with the intent to remove  
16 information or take information out of petitioners' hands. At  
17 most, it's irresponsible or just something done out of  
18 frustration, but the evidence was not destroyed, the evidence  
19 was not lost based on the physical action of throwing the  
20 phone, and it was not done with the intent to deprive the  
21 petitioners.

22 THE COURT: Therefore, your client will consent to the  
23 seizure of his devices?

24 MS. BLECHER: I was actually about to raise that.

25 So, Mr. Qin is fine with the -- I am speaking right

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1 now about the -- because he has the two phones. He has his US  
2 phone and his Chinese phone. The Chinese phone is the one that  
3 was smashed. He does not use that anymore and that can  
4 certainly be seized. With respect to his other phone, I don't  
5 know that there would necessarily be an objection. As I  
6 stated, he is sort of day-by-day reaching out to people to kind  
7 of live his life. So I don't know to the extent that it can be  
8 turned over this second if he doesn't have arrangements to go  
9 somewhere, but I don't think that there would be an objection  
10 to arrange for that to happen.

11 THE COURT: Some time ago you spoke with me about his  
12 interactions with his wife, estranged wife, and that because of  
13 health issues, and because of perhaps interpersonal  
14 difficulties, he did not press to receive documents from her.

15 Did I understand your statements correctly?

16 MS. BLECHER: Your Honor, it's correct that on  
17 particular occasions petitioners asked, can you do something  
18 right now, and he said right now -- I am not going to talk  
19 about her health issues. He named the specific issue and said,  
20 for that reason, I had asked her previously, I don't want to  
21 ask her right now, I will wait a couple of weeks and try again.

22 THE COURT: The reason why I am asking is, accepting  
23 that there may be health issues and accepting there may be some  
24 points of dispute or enmity in their relationship, it would be  
25 surprising to me that your client would come to court today

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1 with the very real prospect of getting remanded rather than ask  
2 his estranged wife for access to these documents. That's the  
3 thing I'm having difficulty understanding. However nice he  
4 wants to be, if it is his freedom on the line, why is he not  
5 asking her for these materials?

6 MS. BLECHER: Your Honor, these statements were made  
7 in late April. He has asked her again.

8 THE COURT: And?

9 MS. BLECHER: To my knowledge, nothing has  
10 materialized.

11 THE COURT: Is that because they don't exist or  
12 because she has decided not to give them to him?

13 MS. BLECHER: When your Honor says don't exist, for  
14 example, we talked about the immigration paperwork. We don't  
15 know necessarily whether they are still there or not still  
16 there. All that Mr. Qin knows is Ms. Liu handled getting that  
17 filed and that she would have it. I think there might be  
18 questions as to whether it's still there or not still there,  
19 but I don't think that Mr. Qin is in a position to make a  
20 definitive statement one way or the other.

21 THE COURT: And that's troubling to me, because as you  
22 have noted just a moment ago, these issues really just flared  
23 up in April, and I thought I issued what I called a definitive  
24 order on the matter; and yet, not only can you not produce or  
25 have not produced these documents, you can't even tell me

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1 today, which is August, whether these documents exist.

2 I suspect, because my next question to you would be:  
3 Are there additional tax records? Do they exist and they just  
4 haven't been produced, or do they not even exist? And with  
5 respect to the bank records, are you telling me there are no  
6 other bank records at all to produce?

7 MS. BLECHER: With respect to the texts, Mr. Zhang,  
8 who speaks the language, went through to look for relevant  
9 messages. And so those, to the extent that they were there,  
10 have been produced.

11 To the extent we are considering this a rolling  
12 production --

13 THE COURT: It shouldn't be a rolling production at  
14 this stage of the game. It should have been done long before  
15 today.

16 MS. BLECHER: What I am saying is, if there was a  
17 message yesterday that may be responsive to or may have been  
18 with one of the individuals they asked about, does that exist,  
19 I can't tell you right now.

20 THE COURT: You may have misheard me. I was asking  
21 about tax materials, not texts.

22 MS. BLECHER: That's my mistake. The tax records,  
23 2020 and 2021 were produced. Mr. Qin had not filed his 2022  
24 tax return as of the time of his deposition. And I did ask Mr.  
25 Qin about this before we came here today, and he said he did

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1 about a week ago file his 2022 return. He requested it from  
2 his counsel and we will be providing that to petitioners.  
3 That's the US return.

4 THE COURT: Are there other returns that he is filing?

5 MS. BLECHER: I am not aware of any additional  
6 returns, amendments, etc. The outstanding one was 2022 and  
7 that has just recently been filed.

8 THE COURT: With respect to the bank records, did I  
9 understand from your earlier discussions that there are no  
10 other bank accounts in which he has any interest, beneficial or  
11 otherwise, and therefore there are no additional bank records  
12 to produce?

13 MS. BLECHER: With the exception of the updating of  
14 the Cathay Bank records.

15 THE COURT: Yes, of course. I am trying to understand  
16 why there is this argument about him needing to go to China to  
17 update records if indeed these accounts were closed more than  
18 five years ago.

19 MS. BLECHER: These accounts were closed. If I  
20 remember correctly, it's in 2018 or '19 that the Hong Kong  
21 accounts were closed. It coincided with the collapse of his  
22 stock value.

23 There were accounts that were closed earlier. There  
24 was one closed at UBS a number of years earlier. The Hong Kong  
25 accounts -- Standard Chartered account, JP Morgan Chase

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1 account -- were closed in 2018 or 2019. And the issue is,  
2 because they are closed, and because Mr. Qin does not have  
3 immediate online access, that he has to request the records for  
4 those accounts from the banks. And he tried to have someone  
5 contact them electronically, I believe there was a form. He  
6 had someone -- I will use the term assistant, but it's someone  
7 who helps him in Hong Kong -- I believe Kevin Wong, to go to  
8 the bank, can you see if you can get the documents. And it was  
9 Kevin Wong who relayed back that they are saying you have to  
10 come to Hong Kong to get them. So our understanding is that he  
11 cannot get the Hong Kong account records.

12 THE COURT: Is that in the messages that were produced  
13 in this matter? Again, if it's the exchange that I have been  
14 looking at, I didn't understand it to say that. I understood  
15 Mr. Wong to be saying, it might be easier if Mr. Qin were to go  
16 to the physical bank branch in Hong Kong or China to get them.  
17 I didn't understand him to be saying that's the only way to get  
18 them.

19 MS. BLECHER: Mr. Qin has phone conversations with  
20 Kevin Wong, so it's not necessarily the case that written is  
21 the only discussion about the matter. Mr. Qin's understanding,  
22 based on what was communicated to him by Kevin Wong, is that he  
23 needs to go to Hong Kong to obtain these documents. And the  
24 reason why -- your Honor started this entire discussion with  
25 what is the position of respondent -- is he has diligently

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1     tried to get these records.

2             So, with respect to the Hong Kong records, he tried to  
3     get them; he was denied access. I believe he has tried to  
4     contact the banks directly and not gotten a response. So he  
5     just has to rely on what is conveyed back to him by Mr. Wong in  
6     Hong Kong.

7             With respect to the US bank account, the open account,  
8     we will supplement. There is a closed account, and he did  
9     request the bank records from that account. And, as we  
10    explained, we received and produced statements going back five  
11    years until the account was closed. We had mentioned in our  
12    opposition that that's consistent with requirements in the US,  
13    under Bank Secrecy Act laws, to maintain records for five  
14    years. But Mr. Qin has no personal knowledge of whether JP  
15    Morgan has additional statements somewhere. All that Mr. Qin  
16    can say is he reached out to the bank to get statements for  
17    this account and the bank provided him with the statements, and  
18    all of those were provided to petitioners. And so there is  
19    nothing more for him to do in that regard.

20            THE COURT: I have a couple of sort of overarching  
21    questions and one is: What was surprising to me about your  
22    opposition was the extent to which you sought to reflect onto  
23    petitioners the obligation to obtain certain materials. You  
24    suggested that a contempt proceeding could not be brought  
25    because, for example, there were other assets that could be

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1 seized or at least inquired into, there were third parties that  
2 could be questioned, there were other avenues that could be  
3 taken to get the materials, that petitioners could reach out to  
4 banks and to the third parties to get the information that your  
5 client couldn't produce. And I found that curious because I  
6 did not think there was that requirement in contempt law.

7 What you're telling me today is that your client has  
8 done all that he could do. Why then, if that is the case, do  
9 you feel compelled to push onto petitioners the obligation for  
10 getting these materials?

11 MS. BLECHER: Your Honor, it is overarchingly a  
12 contempt motion, but there is a request for a specific remedy  
13 in there that is not a traditional contempt remedy, it's more a  
14 discovery violation remedy, which is what petitioners call  
15 adverse findings or adverse inferences. And an important  
16 component of that is, if there is not bad faith in the  
17 destruction of documents, to what extent there is prejudice to  
18 the other side.

19 And, also, even in the situation where you're dealing  
20 with a contempt motion, one of the issues there is it's  
21 supposed to remedy some injury, some harm that has accrued to  
22 the moving party. That's what the point of contempt is, that  
23 there is some harm that has been suffered by the moving party  
24 and that some sanction may be appropriate to compel the other  
25 party to address that.

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1           And there was also a request for fees, etc. that all  
2 go to the harm that has been there. So one issue that is  
3 relevant to that is, if Mr. Qin has during his deposition  
4 identified numerous assets, and these are assets that  
5 petitioners point to in their moving papers, such as these two  
6 cars that are in China and Hong Kong, if they have identified  
7 the bank account, they are asking about the Cathay Bank  
8 account, why haven't they tried to restrain assets? If they  
9 are claiming that denial or the fact that they haven't obtained  
10 information about specific assets that they are interested in  
11 has prejudiced them, shouldn't there be an indication that they  
12 have been taking steps to satisfy their judgment using the  
13 assets that have been made available to them?

14           To go back to the spoliation question, there is this  
15 prejudice issue, but there also is this question of you can't  
16 have a contempt motion and you can't have spoliation for the  
17 failure to produce documents that do not exist. There cannot  
18 be an adverse inference for a specific finding unless the  
19 movant demonstrates that there is some basis to believe that  
20 the evidence existed and that it would have supported the  
21 inference that they are looking for.

22           And in many of these cases, some of these are  
23 corporate cases where you have corporate defendants or  
24 corporate parties that have very clearcut preservation  
25 policies. But some of these are cases where a person testifies

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1 that a certain document exists, and then it hasn't been  
2 produced, and then there is a reasonable basis to believe that  
3 that document existed and it may have been spoliated, or to  
4 support the finding that the documents that you claim are  
5 missing would have supported the finding or the inference that  
6 the petitioners are asking for.

7 If they have not sought discovery from some of these  
8 assistants -- during Mr. Qin's deposition, he said this person  
9 is going to be in New York. He mentioned a couple of people  
10 that are in New York. If there is no attempt by the  
11 petitioners to get any information from any other party, there  
12 seems to be lacking a basis to assert that documents existed  
13 and were destroyed, and, also, that the documents we allege  
14 were destroyed would have contained information that is  
15 favorable to us.

16 So, there's various reasons why the lack of  
17 third-party discovery prevents a spoliation finding, prevents  
18 an adverse inference suggestion even if there had been  
19 spoliation that occurred. And there is certainly case law,  
20 which we cited in our opposition brief, to the effect of, where  
21 certain information can be obtained from another party, that a  
22 spoliation finding is unwarranted, and also, in some cases,  
23 that a contempt finding is unwarranted.

24 THE COURT: In your opposition, you suggested that  
25 petitioners could not ask the Court to draw adverse inferences

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1 post-judgment. In their reply, they provided citations to  
2 Federal Rule of Civil Procedure 37 and to several cases  
3 indicating that adverse inferences were available  
4 post-judgment. Do you agree with that or do you still contest  
5 that? And that's the legal question, not the factual question,  
6 as to whether they are warranted.

7 MS. BLECHER: To be clear, the Court has broad  
8 discretion to fashion a remedy in both the Rule 37 and the Rule  
9 69 context. And there is not any rule, any statute, any bar,  
10 that respondents are aware of, that there could never be an  
11 adverse inference in the post-judgment context. The question  
12 is whether it's appropriate in this context.

13 The petitioner cited a number of cases in their reply  
14 brief for the proposition that this remedy could be available,  
15 and none of those cases involve a situation where a finding of  
16 a fraudulent conveyance or a transfer with the intent to hinder  
17 or defraud creditors was found in the post-judgment context.  
18 They cited a Western District of Virginia case, *RLI Insurance*  
19 *Co.*, and in that case, the court made a finding that,  
20 generally, an adverse inference could be available against the  
21 debtor in a subsequent future proceeding against the same  
22 debtor with respect to the same judgment. In a Northern  
23 District of California case, this arises under a special  
24 provision of California law that allows a judgment to be  
25 amended to add an alter ego debtor to the judgment, and the

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1 entity that was sought to be added was a party to that  
2 proceeding. So in that context, the court found it permissible  
3 to draw an adverse inference against a party to the proceeding.

4 The problem here is that the petitioners are asking  
5 for an adverse inference that Mr. Qin transferred property with  
6 the intent to defraud creditors. There are a number of factual  
7 issues with that claim, but as a legal matter, unlike the  
8 California case that they cited, New York law is clear that an  
9 action to undo a fraudulent conveyance can only be brought in a  
10 separate post-judgment proceeding. That applies to both a  
11 fraudulent conveyance and also to assess alter ego liability  
12 for a judgment against a judgment creditor. And I can give  
13 your Honor a cite, which is *Nykool A.B. v. Pacific Fruit, Inc.*,  
14 2012 WL 1255019, at \*5-\*8 (S.D.N.Y. 2012). This case itself is  
15 actually a report and recommendation, and I mention it because  
16 it actually collects New York state law and Second Circuit law  
17 all on this topic. It said that remedy that they are seeking  
18 ultimately, which is to undo these transfers or assess alter  
19 ego liability, needs to be brought against Ms. Liu or against  
20 these trusts. It requires a separate defendant who is not a  
21 party to this proceeding. But yet they are asking this Court  
22 to draw an adverse inference with respect to Mr. Qin. It  
23 carries no effect with respect to Mr. Qin. It can only be used  
24 in a separate proceeding, and it is unclear how they intend to  
25 do that. If they need to commence a new proceeding, are they

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1 going to try to collaterally estop Ms. Liu from challenging  
2 whether this was a bona fide transfer for value? She is going  
3 to say, and she'll be right, that she did not have a full and  
4 fair opportunity to litigate that fact question in the context  
5 of this proceeding.

6 So, if it serves no purpose in this proceeding, it  
7 cannot be simply imported, indeed, it would not be fair to  
8 import it into another proceeding in which the other party to  
9 the fraudulent transfer was not participating and was not a  
10 party. So the reason that we stated in our opposition that it  
11 made no sense in this case, it should not be available, is  
12 because there literally is no proceeding here where that  
13 inference or the finding that they are asking the Court to draw  
14 can actually be utilized.

15 Your Honor, they did make an argument that Mr. Qin is  
16 somehow a beneficiary of the fraudulent transfer because he  
17 gets to keep the assets for himself. The cases that they cite  
18 for that all deal with a provision of the New York's debtor and  
19 creditor laws that allow money damages to be awarded against  
20 somebody who personally benefits from facilitating a fraudulent  
21 transfer. And so those all involve findings against officers  
22 or shareholders of a corporation where the corporation was the  
23 debtor. They did not cite any cases that stand for the  
24 proposition that you can eviscerate this principle that a  
25 fraudulent conveyance action needs to be brought against the

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1 transferee. If it were the case that the transferor is also a  
2 beneficiary, there would be no need for that rule; it would  
3 apply to every single case.

4 THE COURT: I would ask you to please turn to the  
5 chart that I was handed this afternoon at the beginning of the  
6 proceeding. If you're able to do so, I would ask you to go  
7 through each category and either agree or disagree with the  
8 status that is listed.

9 MS. BLECHER: Number 1, the bank records of Qin, as I  
10 stated earlier, there are additional records from Cathay that  
11 we will produce. They have also requested bank records of  
12 certain entities, etc. and Mr. Qin does not have -- he says he  
13 is not associated with these entities and doesn't have that  
14 information. So I would agree it's partially outstanding with  
15 respect to the Cathay Bank statements.

16 American Express records of Qin and St. Tome --

17 THE COURT: I can't hear you. I just ask you to be a  
18 little slower and a little louder.

19 MS. BLECHER: I will just do them by number.

20 Number 2, Mr. Qin I think tried to get American  
21 Express records, but that's overseas and was unable to get  
22 them. St. Tome is not an entity that Mr. Qin claims any  
23 ownership or control interest in. I believe it's the same  
24 entity that paid him maybe the \$4,000 consulting fee that was  
25 discussed earlier. So he does not have access to those

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1 documents.

2           Number 3, Mr. Qin does not have them. So when  
3 petitioners say completely outstanding, we don't agree. There  
4 is just nothing that he has to produce. He has no recollection  
5 of doing anything with respect to a trust in 2009, and did not  
6 recognize the particular trusts that were discussed in this  
7 litigation and the entities that petitioners are trying to seek  
8 alter ego liability for.

9           Number 4 I addressed earlier. Mr. Qin has continued  
10 to ask. For purposes of a contempt motion, he just continues  
11 to ask. He cannot make the documents materialize. So it  
12 remains outstanding, but it's not especially clear what else  
13 Mr. Qin can do.

14           Number 5 is partially outstanding because he has  
15 recently filed his 2022 return and that will be provided to  
16 petitioners.

17           The schedule of assets, this is a claim that  
18 petitioners make. They simply accuse Mr. Qin of fabricating a  
19 document.

20           THE COURT: That document with one asset, that's the  
21 schedule of assets?

22           MS. BLECHER: Your Honor, the document was provided by  
23 Ms. Liu to Mr. Qin. It is Mr. Qin's understanding and  
24 recollection that the only asset transferred, owned by King  
25 Fane, was that property, and that he transferred that share as

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1 part of the divorce agreement. So he has turned over what was  
2 provided to him. It's not inconsistent with his recollection  
3 of what was --

4 THE COURT: He recalled three or four pages. He gave  
5 one thing.

6 MS. BLECHER: Mr. Qin seemed to have a practice of  
7 asking people to simply tell him what is in a document that is  
8 not written in a language that he understands. The document  
9 was in English. He had someone speaking English reading it for  
10 him. He does not know, looking at the English version, this is  
11 the contract and this part is the schedule of assets. He  
12 testified that the document was three or four pages.  
13 Petitioners kept asking him about the schedule and he said  
14 three or four pages. He said he could not understand what it  
15 said because it was in English. But he said the document was  
16 about three or four pages, the document that was produced with  
17 the schedule of assets is about three or four pages. So there  
18 is not an inconsistency there. Petitioners want to keep  
19 interpreting what he said as meaning that the schedule itself  
20 was three or four pages. It was not in a language he can  
21 understand when he saw that document, and he would not be in a  
22 position to be able to distinguish between the body of the  
23 document and the schedule.

24 With respect to number 6, he has produced what was  
25 given to him. I don't know that he can represent this is the

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1 actual schedule. What he can represent is this is what was  
2 provided to him by a counterparty of that agreement.

3 Number 7, Mr. Qin is going to be producing his most  
4 recent tax returns, so that seems to fall under this topic.

5 He has testified regarding his consulting agreement or  
6 arrangements that he tried to enter into.

7 THE COURT: The consulting agreement was oral, there  
8 is no written documentation of it?

9 MS. BLECHER: The St. Tome agreement is the subject of  
10 a separate line item here, number 8. The consulting agreement  
11 with St. Tome, there was a written consulting agreement that is  
12 a document that, to Mr. Qin's best recollection, was placed  
13 into storage in a storage unit in Hong Kong; and then when SMI  
14 failed to pay the bill, because it had no more money, the  
15 storage unit disposed of everything that was in the unit.

16 THE COURT: I didn't quite understand that. Where is  
17 the storage unit?

18 MS. BLECHER: In Hong Kong.

19 THE COURT: And there were no efforts to pay whatever  
20 debt there was to the storage unit so they wouldn't take and  
21 destroy what was in it?

22 MS. BLECHER: The storage unit was SMI's unit. The  
23 company was stripped of its assets. I am not sure if there was  
24 anyone sitting around who cared at that point from SMI. It's  
25 subject to numerous claims from creditors. It was stripped of

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1 its actual revenue-producing assets. So it does not appear to  
2 be the case that there was an SMI representative that wanted to  
3 pay that bill.

4 As far as Mr. Qin, I don't know that he was aware that  
5 the agreement was being put into a storage unit that was an SMI  
6 storage unit. I think his understanding was it was just being  
7 put somewhere for safekeeping, and then he subsequently learned  
8 it was in an SMI unit and that the unit's contents had been  
9 disposed of because SMI had not paid the bill. So it's  
10 outstanding, but I am not aware there is any agreement for Mr.  
11 Qin to produce because his understanding is it's been disposed  
12 of by the storage unit.

13 The agreement is with a company St. Tome, with which  
14 Ms. Liu has an affiliation. He also identified two individuals  
15 in Hong Kong that are, I believe, directors, that they have  
16 some affiliation with it. So it's possible that there is a  
17 third party that has another copy of the agreement. Mr. Qin no  
18 longer has his copy.

19 THE COURT: Mr. Qin no longer has his copy?

20 MS. BLECHER: Of the consulting agreement.

21 THE COURT: Does not or does?

22 MS. BLECHER: Does not.

23 THE COURT: So that's the answer to number 8.

24 MS. BLECHER: That's number 8, your Honor.

25 THE COURT: When he is receiving money from St. Tome,

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1 is it a direct deposit? Is there any sort of indication as to  
2 why he is receiving \$4,000 a month? Are there credit card  
3 bills attendant to the credit card that seem to be related with  
4 the company that he may have overspent on that resulted in the  
5 deduction of funds?

6 MS. BLECHER: The credit card is a company credit card  
7 and Mr. Qin is supposed to use it for company expenses. I  
8 believe he did testify during his deposition that he may have  
9 used it on one or two occasions to stay at a hotel on a night  
10 when he did not have somewhere to stay. But it is a company  
11 card. He said he does not get the bills. Presumably, the  
12 bills go to the company. I can't answer that question  
13 affirmatively, your Honor. I just know he does not get those  
14 bills. But if the company gets them, it would make sense that  
15 the company would deduct from any payments being made to him,  
16 whatever the balance is on those cards.

17 THE COURT: Number 9.

18 MS. BLECHER: Mr. Qin, he did testify he used to own a  
19 plane and a boat. He bought them around 2017 or 2018 when he  
20 did have a lot of money. There was some confusion on the last  
21 day of Mr. Qin's deposition, but he did testify that he had  
22 disposed of these assets because, again, when SMI collapsed, he  
23 had a lot of creditors coming at him and he had no more money.

24 This is specific to the watercraft or the aircraft.  
25 He does have two cars in Beijing. I don't believe he has any

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1 records associated with those to produce. The cars are there.  
2 I believe he invited the petitioners to go and get them, if  
3 they want them, but he doesn't have documents to give them  
4 about those two cars.

5 With respect to the boat and the plane, he says he  
6 does not have any documentation regarding the sale, that it was  
7 somehow used to satisfy a debt that was -- petitioners are not  
8 the only creditors that have come to Mr. Qin's door in the wake  
9 of the collapse of his company. And my understanding is the  
10 boat and the plane were used to satisfy some other creditor  
11 obligation.

12 THE COURT: And the Rolls Royce is here in the States?

13 MS. BLECHER: There are a few cars in the States, your  
14 Honor, and Mr. Qin is not an owner of them. The Rolls Royce,  
15 he referred to it as a company car. I believe the company is  
16 St. Tome.

17 THE COURT: This is the company in which his wife has  
18 an interest?

19 MS. BLECHER: His wife does have an interest in that  
20 company.

21 THE COURT: Is there someone other than his wife who  
22 has an interest in this company?

23 MS. BLECHER: He identified two specific individuals  
24 in Hong Kong who also had an interest. He also identified a  
25 man named Frank who had a former interest. Yong Zhang was one

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1 of the people. I forget the name of the other individual. He  
2 said there were three people that he would talk to about St.  
3 Tome. And there used to be someone named Frank who has since  
4 left the company.

5 The Rolls Royce is the company car. Then there is a  
6 Benz Jeep that Mr. Qin says belongs to his younger brother, who  
7 is a movie producer, and apparently has residences and cars  
8 scattered around. But he does keep a car in the city, he keeps  
9 a car in New York. And Mr. Qin does drive it on occasion, but  
10 he does not own the car and does not have records regarding the  
11 Benz Jeep. Mr. Qin does not have any other vehicles. He did  
12 testify that he will occasionally borrow a car from a friend,  
13 but he does not own any vehicles in New York or in the US. He  
14 has the two cars that are in -- one in Beijing and one in Hong  
15 Kong.

16 I can move on to number 11, but to be honest, I'm not  
17 really sure --

18 THE COURT: I am at number 10.

19 MS. BLECHER: Given that the following real property  
20 is not identified on the chart, I don't recall specifically  
21 which of the properties this is referring to.

22 THE COURT: I'm imagining it's the Applegreen property  
23 and the Plaza Penthouse.

24 MS. BLECHER: Your Honor, Mr. Qin has been consistent  
25 in stating that he did not ever own the Plaza apartments, that

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1 those were purchased by Ms. Liu or some entity affiliated with  
2 Ms. Liu. He does not claim to live there. He stated that he  
3 has stayed there on occasion, that he will reach out and get  
4 permission to stay. He does not keep clothes there. He does  
5 not have any documents to provide regarding the Plaza 2003 or  
6 Plaza 2009.

7 35 Applegreen he has no knowledge of at all. It's  
8 unclear what that property even is. He is only aware of an  
9 address at 39 Applegreen.

10 With respect to 39 Applegreen, he provided the deed of  
11 gift that concerned the BVI entity that owned that property, as  
12 well as a property transfer tax form associated with that  
13 transaction, which I believe is in 2018. He does not have  
14 anything else that qualifies as a lease agreement. It's not  
15 his property. He transferred it in 2018 to Ms. Liu's mother  
16 pursuant to their divorce decree. So there is nothing else  
17 that Mr. Qin has to produce.

18 THE COURT: And the Rector Place property? Was it 377  
19 Rector?

20 MS. BLECHER: 377 Rector Place is owned by another  
21 Mr. Han, who is a friend of Mr. Qin, and he stays with him  
22 sometimes. I believe he has used it maybe to receive mail at  
23 some point. He does not own that property.

24 THE COURT: He is in the City of New York right now.  
25 Where is he staying tonight?

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1 MS. BLECHER: I don't think I have asked him where he  
2 is staying tonight. He did say that he spent last night at the  
3 84th Street, the Upper East Side address. The one associated  
4 with Mr. Cao, I believe is the -- with Boss Cao. I can't  
5 answer.

6 THE COURT: All right.

7 There is nothing to give for number 11.

8 MS. BLECHER: I am not even sure I understand what  
9 number 11 is asking for. So I am going to say there is nothing  
10 to give for number 11.

11 THE COURT: Number 12.

12 MS. BLECHER: Number 12, Mr. Qin testified he does not  
13 own any of these properties. He does not have any records  
14 regarding the property tax, at least any time in the past five  
15 years. He did previously own some of these properties. I  
16 don't think he still has any records from that time, but I  
17 believe he produced some public records he was able to dig up,  
18 because he was trying to be helpful, even though public records  
19 are not the most helpful things to produce. He has nothing to  
20 produce on property taxes because he doesn't own the properties  
21 and doesn't pay the taxes on them.

22 Number 13, Mr. Qin has produced the messages that he  
23 identified. He did testify that he generally communicates  
24 via --

25 THE COURT: I think you may be misunderstanding me. I

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1 am asking you to either agree or disagree with the status that  
2 is given. If, for example, more things have been produced than  
3 they say have been produced, please tell me. If they have  
4 accurately identified what has been produced, tell me.

5 MS. BLECHER: I think it's accurate the items that  
6 have been produced in response to 13. We obviously disagree  
7 with the contention that it's incomplete. He went through and  
8 identified the text messages and those are what he had. To the  
9 extent there may have been some in the past, he said he  
10 normally does this by phone, those no longer exist. And so  
11 there is not anything additional to produce. Again, as I  
12 mentioned earlier, if there is a new message from yesterday,  
13 maybe that exists. But as far as, there was an order, Mr. Qin  
14 went through to find responsive information, that's what he  
15 found, and there is nothing else to add to that.

16 It's the same thing for number 14. If there were not  
17 communications produced, it's because Mr. Qin did not have text  
18 communications. He may have communicated by phone, but he did  
19 not have anything responsive, any communications with Frank or  
20 Ren Hongqi. And it is correct that there were screenshots  
21 produced showing communications with Han. And I believe there  
22 were some screenshots of a check that Huang Binjun had written  
23 to pay some of Qin's Amex bills. I believe that was in WeChat  
24 as well.

25 Number 15, their note I believe is accurate. Given

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1 that Mr. Han and Huang Binjun are in 15 as well, it's the same  
2 messages that are referenced in 14. So their description is  
3 accurate and Mr. Qin does not have additional WeChat messages  
4 with those individuals.

5 Number 16, their note is accurate. Mr. Qin does not  
6 have a copy of this document. I think he tried in the past to  
7 get a copy of the document and has not been successful, but he  
8 does not have a copy to provide.

9 And number 17, their note is accurate. Mr. Qin does  
10 not have any documents from the FBI. He testified that he was  
11 shown, I think, the warrant, but it was never given to him, and  
12 he doesn't have any other documents related to that FBI raid.

13 THE COURT: When was the last time your client went to  
14 Beijing or any part of China?

15 MS. BLECHER: I don't know if I am in a position to  
16 answer that question.

17 THE COURT: I am sure there is someone at the table  
18 who is.

19 MS. BLECHER: I'm saying I may need to phone a friend.

20 THE DEFENDANT: So, your Honor, last time I went to  
21 China was the Chinese New Year, according to the lunar  
22 calendar, January 3, 2020, according to the lunar calendar.

23 THE COURT: January 3, 2020.

24 THE DEFENDANT: According to the Chinese calendar.  
25 Roughly, around February 3, 2020.

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1 THE COURT: February 3rd of 2020.

2 Is there a different answer if the question is when  
3 was the last time he went to Hong Kong?

4 THE DEFENDANT: I went there February 3, 2020, and  
5 three days later, roughly, on February 6, 2020, I fly back to  
6 New York.

7 THE COURT: Ms. Blecher, you have indicated to me  
8 earlier that petitioners, you believe, have not met their  
9 burden of demonstrating a basis for me to find either  
10 spoliation or the factual predicate that would permit an  
11 adverse inference. In connection with this proceeding, I  
12 received, and I believe Ms. Lee included it as an exhibit, an  
13 appendix 3 of proposed adverse inferences. It includes both a  
14 requested adverse inference for the missing or destroyed  
15 documents and the information that the missing or destroyed  
16 documents would contain.

17 Now, I don't believe you have actually contested any  
18 of these. So you have told me in sort of a broad-brush fashion  
19 that they have not demonstrated it, but they have put this  
20 together. So I don't know whether what you're saying is  
21 everything here is wrong, or you're accepting for purposes of  
22 this argument that what is contained in this appendix is  
23 correct, but it is insufficient, or something else.

24 MS. BLECHER: Your Honor is correct that we did not  
25 prepare a similar appendix going bullet point by bullet point

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1 in response, because a lot of these actually repeat the same  
2 language over and over again. We did address it more generally  
3 in the body of the brief, which is to say that, certainly, if  
4 there is a document that is missing, we are not contesting  
5 that. The issue is there is no basis to assume that the  
6 document existed and was destroyed or withheld.

7 And then in the third column, the enumeration that  
8 missing or destroyed documents would contain, the bullet points  
9 generally contain very speculative and tenuous connections.  
10 The first one, Ali Weng is Qin's assistant and as his assistant  
11 would participate and know about Qin's major financial  
12 transactions, we have already discussed the use of the word  
13 assistant does not mean --

14 THE COURT: I am not accepting your use of the word  
15 assistant. So I am actually accepting the petitioners' use of  
16 the word assistant.

17 MS. BLECHER: It's not my use, but that's what Mr.  
18 Qin, as a factual matter, has testified, is that these people  
19 are not his assistants.

20 Nevertheless, the mere fact that somebody has assisted  
21 him on a particular occasion, with respect to a particular  
22 item, does not naturally lead to the conclusion that, if there  
23 are no chats with this person, that therefore there must have  
24 been chats and those chats must have contained messages that  
25 indicate that a transfer that took place -- the first one is 16

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1 Hickory Drive, that was transferred to his sister, I believe,  
2 back in 2011 or 2012 initially.

3 So, they are asking the Court to find that transfers  
4 that happened years before -- there was even an underlying  
5 dispute in the arbitration -- were made to defraud creditors  
6 that could not even be contemplated at that time. It doesn't  
7 make sense as a factual matter. It's not legally a fraudulent  
8 transfer. You can't act with intent to defraud a creditor that  
9 doesn't exist. And the idea that because somebody -- even  
10 accepting, which we did not, that assistant means assistant,  
11 assistants help with all sorts of things. It's wildly  
12 speculative and overbroad to draw a conclusion that the absence  
13 of communication with a particular person who has assisted Mr.  
14 Qin on a different occasion would be documents demonstrating  
15 that this specific property and the transfer of this specific  
16 property was done with fraudulent intent. There is no direct  
17 connection between the relationships they purport to draw.

18 In the second bullet, it says that Ali Weng helped  
19 arrange places for Mr. Qin to stay and would therefore be aware  
20 of changes in Qin's housing situation. How does that lead to a  
21 conclusion that Mr. Weng would have documents that indicate  
22 that a transfer of property from years ago was made with the  
23 fraudulent intent to prevent creditors from reaching them.  
24 There is no natural connection between helping somebody find a  
25 place to stay and having intimate knowledge as to the purpose

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1 of a transfer of a specific piece of property.

2 The third bullet is the same. Ali Weng deals with  
3 Qin's personal matters and therefore would have been involved  
4 in Qin's transactions regarding 16 Hickory Drive.

5 These are wildly overbroad and speculative conclusions  
6 that they are asking the Court to draw. And in order to get an  
7 adverse inference instruction, the movant has to demonstrate  
8 that there is a reasonable basis to believe that the documents  
9 that were not produced, had they been produced, would have  
10 supported the inference that they are asking the Court to draw.  
11 And similar language goes throughout this document.

12 THE COURT: I will just note for petitioners that I  
13 think your adverse inference number 4 might be missing a few  
14 words. Because mine ends, it just speaks of purported  
15 transfers of funds. Perhaps you meant to say "were made with  
16 fraudulent intent," but I don't have that.

17 Ms. Blecher, are you telling me that detaining your  
18 client as a matter of coercive contempt would not be fruitful  
19 because your client has no more documents to produce, could not  
20 find any more documents to produce, there is just nothing else  
21 there, other than those very limited categories of things that  
22 you spoke to me today about, including tax returns and a couple  
23 of more current Cathay Bank records? You're telling me as an  
24 officer of the court that there is nothing else out there?

25 MS. BLECHER: I am telling your Honor based on his

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1 representations --

2 THE COURT: I want you to put yourself out there.  
3 It's not enough for me to put your client. I guess I don't  
4 know how good of a job you did at communicating with your  
5 client the significance of this. Because I am considering very  
6 seriously detaining him, but you're going to tell me, as a  
7 coercive measure, it won't result in the production of  
8 additional documents because you say there are no additional  
9 documents to produce.

10 MS. BLECHER: Mr. Qin wants to comply with the Court's  
11 order, and he has taken reasonably diligent steps to try and do  
12 that. He wants to do that. And as part of that process, he  
13 has reached out and tried to obtain documents that he does not  
14 have because he generally just doesn't have a history of  
15 keeping good records of his business dealings. So he has  
16 reached out to third parties to try and get documents, and what  
17 he has been able to get is what he has produced.

18 To the extent that he is able to get anything else, it  
19 would be nothing more than a matter of fortuity that something  
20 else materializes, because he has made all the effort that he  
21 can make to try to get these materials. And so incarceration  
22 would not serve the purpose of compelling further compliance  
23 because it's not possible for him to do any more than just  
24 repeating the same things that he has already done.

25 THE COURT: So when he says, "I will never pay. Even

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1 if you shoot me dead right now or you lock me up in jail or you  
2 put me in jail, I will not," I should not worry about that? It  
3 just seems to me like contempt.

4 MS. BLECHER: Your Honor, Mr. Qin made certain  
5 statements --

6 THE COURT: Under oath at his deposition.

7 MS. BLECHER: He also made statements under oath at  
8 his deposition that if the marshals showed up at his house to  
9 take assets, that he would gladly turn them over and that he  
10 would respect the law. He was asked specific questions by  
11 petitioners' counsel about whether he understood that he was  
12 required to comply and to turn over assets, and he specifically  
13 asked petitioners, why are we even wasting time with these  
14 questions when they could just come and take the assets? He is  
15 not going to disobey an order, and he was not intending to  
16 convey -- I believe he even said on the record at one point  
17 that when he used the phrase "shoot me," he understood people  
18 were not interpreting it the way he meant it.

19 THE COURT: And when he videotaped himself burning  
20 money?

21 MS. BLECHER: My understanding is he is not the one in  
22 the videotape burning the money, but he did have a videotape of  
23 it. And the background of that is that there was an associate  
24 that was in town, and he had given money for the Chinese Lunar  
25 New Year to, I believe it was General Lui, and General Lui

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1 returned the money and the money was in Mr. Qin's apartment.  
2 And General Lui was later accused of some kind of bribery, or  
3 something along those lines, and Mr. Qin was afraid that the  
4 money in his home in an envelope that had General Lui's name on  
5 it would constitute evidence that could be used against Mr. Lui  
6 improperly, even though it was just supposed to be a Chinese  
7 Lunar New Year gift. So he asked somebody to burn the money.

8 The point Mr. Qin was making in that colloquy is there  
9 was a broader conversation regarding how the size of a  
10 transaction that your Honor or I might think is relatively  
11 large is small to him, and he was commenting on, I don't care  
12 about money, I have burned money to protect my family. That  
13 was the point.

14 THE COURT: There is a disconnect, though, between  
15 your current representations to me that your client has no  
16 assets and has fallen on hard times and your statement just a  
17 moment ago that he conceives of transactions in numbers larger  
18 than we can think of and therefore it was not a big deal to him  
19 to burn that money. I don't think there is a way you can  
20 reconcile that.

21 MS. BLECHER: I am not sure that I can, your Honor.  
22 Mr. Qin used to be very wealthy and operates in a different  
23 headspace than a lot of other people.

24 THE COURT: I don't think it justifies his discovery  
25 productions in this case.

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1 I am going to take a break. I will see you all in  
2 about 15 minutes. Thank you very much.

3 (Recess)

4 THE COURT: I know I kept you here longer. I will  
5 hear from the folks at the front table if they wish to say  
6 anything briefly in reply.

7 MR. SANT: Your Honor, if you so permit, I will allow  
8 my colleague to respond to a couple of the legal points.

9 THE COURT: That will be Mr. Smith.

10 MR. SANT: Yes, your Honor.

11 MR. SMITH: Your Honor, we had referenced a proposed  
12 order. I don't know if you're interested in seeing it.

13 THE COURT: You can show it to me and to the others.  
14 I don't know that I am signing any orders this evening. We  
15 will talk about that.

16 MR. SMITH: Your Honor, I just wanted to address, as  
17 Mr. Sant mentioned, a couple of legal points, with respect to  
18 the two major remedies that we are seeking today, adverse  
19 inference as well as incarceration until he purges his  
20 contempt.

21 With respect to incarceration, what we have heard  
22 today and what you have heard through our papers is very  
23 similar to *Schwarz v. ThinkStrategy Capital Management*. That's  
24 a July 1, 2015 Southern District decision in which the  
25 defendant there was civilly incarcerated. And the facts there

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1 are very similar, and they have been alluded to earlier in this  
2 case. And that's where the Court found that the defendant  
3 offered only a fanciful tale of unparalleled charity and  
4 generosity by his friends. And what the facts were there are  
5 very similar as to here. There, there was a Porsche that the  
6 defendant said was merely a company car. Here we have heard  
7 that the Rolls Royce that he drives around in is a company car  
8 of St. Tome. Of course, St. Tome is the entity that his wife  
9 created and is the entity that he has a credit card for. By  
10 the way, we have not received any of those credit card records.

11 THE COURT: It's because he says he doesn't have  
12 access to them because it's the company of other people.

13 MR. SMITH: Exactly. Again, it's what he says versus  
14 reality.

15 So, the *Schwarz* decision also said that,  
16 quote-unquote, loans received from family and friends in an  
17 amount of approximately \$720,000 over the course of  
18 approximately three years was unbelievable. Here, we have  
19 records that have been produced from the Schwed firm as well as  
20 Seiden Law, and they have been paid over a million dollars in  
21 legal fees, and those fees come from --

22 THE COURT: Sir, could you repeat the sentence? I  
23 heard you, but I didn't hear you fully.

24 MR. SMITH: The point that I am making, just to tee it  
25 up a bit more clearly, is that in the *Schwarz* case they found

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1 unbelievable over a period of close to three years receiving,  
2 quote-unquote, loans from friends and family to cover expenses  
3 totaling approximately \$720,000. Here, we have documentary  
4 evidence that he has received, either he has characterized it  
5 as loans from various entities or friends to cover over a  
6 million dollars in legal fees to the Schwed firm and Seiden  
7 Law. So we believe that that is also evidence that he has no  
8 money to be unbelievable.

9 THE COURT: According to the deposition, who paid  
10 these legal fees, friends?

11 MR. SMITH: Not just in his deposition. We actually  
12 subpoenaed the firms. So they have to give us the records.

13 So, the most recent records we received from Seiden  
14 Law in June show one transfer from China, and this was for a  
15 little over \$40,000; another was from Singapore for \$20,000;  
16 and one that was from the West Coast, from California, for  
17 \$30,000. And these are entities that we have not actually  
18 known about prior to receiving these documents.

19 THE COURT: Although you will excuse my math, but that  
20 gets you \$90,000. You're saying there's a million dollars in  
21 legal fees.

22 MR. SMITH: That is correct. As between those two  
23 firms. I happen to have these, in terms of the location of  
24 them, where they get these funds.

25 In our meet-and-confer with respect to discovery

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1 responses from Seiden Law specifically, when asked if there are  
2 any other documents with respect to the source of these assets,  
3 do you have communications from either your client Qin or from  
4 the entities themselves where this money is coming from or does  
5 it just show up, apparently it just shows up. They had no  
6 other documents. We have the wire transfers they produced to  
7 us.

8 THE COURT: Ms. Blecher, who is paying these fees?

9 MS. BLECHER: Your Honor --

10 THE COURT: Are you telling me that's privileged  
11 information?

12 MS. BLECHER: Not at all, your Honor. I think some of  
13 it might be above my pay grade.

14 THE COURT: Whoever at the table can tell me, can tell  
15 me.

16 MS. BLECHER: I am aware of certain of the entities  
17 that paid that have been discussed at depositions and what  
18 those are. I don't know if there is additional information  
19 that can be provided. On the whole, Mr. Qin, again, as I  
20 stated earlier, has to ask people to help him pay for certain  
21 expenses, borrow money.

22 THE COURT: It's one thing to sleep on someone's couch  
23 for the night, and something else to have them pay a million  
24 dollars in legal fees. How many entities are paying the fees  
25 for this case?

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1 Mr. Zhang.

2 MR. ZHANG: I do believe we received approximately, in  
3 toto, approximately 200K or a little more.

4 THE COURT: Say that again.

5 MR. ZHANG: 200,000 or a little bit more on this case.  
6 We have an outstanding bill we produced as well. We have  
7 outstanding 440,000 unpaid invoice.

8 THE COURT: Outstanding 440,000. But you have gotten  
9 200,000 paid, sir?

10 MR. ZHANG: That's my best recollection.

11 THE COURT: From whom, sir?

12 MR. ZHANG: As petitioner indicated, a wire transfer  
13 with a note, attorney's fees for Qin. So we collect it into  
14 account against Mr. Qin's unpaid invoice.

15 THE COURT: Do you not know where that money is coming  
16 from?

17 MR. ZHANG: I do recall there was one payment came  
18 from St. Fortune Group. And I do recall, as petitioner point  
19 out, two payment from Hong Kong and Singapore with the  
20 comments, payment for Mr. Qin's attorney's fees.

21 THE COURT: And you're not sure where it's coming  
22 from?

23 MR. ZHANG: We could only identify payer's name and  
24 bank account, and we have produced it to petitioners.

25 THE COURT: St. Fortune is the company that's

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1 controlled by his estranged wife's father, yes?

2 MR. ZHANG: St. Fortune was controlled by two  
3 individuals, Mr. Qin's ex-wife and Mr. Qin's ex-wife's father.

4 THE COURT: Family members.

5 I am just saying, not that I have ever been divorced,  
6 but I can't imagine, if I were, that my former husband, which I  
7 have difficulty even saying, would be paying a million dollars  
8 of my legal fees.

9 MR. ZHANG: Only payment we received from Mr. Qin's  
10 ex-wife or ex-wife's father is that 50K from St. Fortune.

11 THE COURT: Sir, I am not sure why Mr. Kushner finds  
12 this funny and is laughing, but he'll tell me at some later  
13 point.

14 Sir, you're \$440,000 in the hole and you're still  
15 continuing to represent him.

16 MR. ZHANG: Yes. Because this case already been here.  
17 Ethically we can't drop him off at this moment.

18 THE COURT: Interesting.

19 Mr. Smith, please continue.

20 MR. SMITH: The million dollar figure includes the  
21 amount that the Schwed firm has been paid as well.

22 THE COURT: I understand, sir. I don't have them  
23 here.

24 MR. SMITH: That's correct.

25 So, I just wanted to point that out with respect to

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1 our motion for contempt. We think it is appropriate here. We  
2 think that he needs to be incarcerated until he can purge his  
3 contempt, particularly with respect to getting documents, but  
4 also at least paying, he can pay his lawyers; he has been  
5 ordered to pay our fees as well.

6 With respect to adverse inferences, Ms. Blecher also  
7 said that those are not available here, and she referenced one  
8 of the cases that petitioners cite in their papers, the  
9 recently decided July 2022 case out of the Western District of  
10 Virginia, the *RLI Insurance Company v. Nexus Services*. In  
11 fact, that case has similar facts to this case as well. It was  
12 a defendant that had failed to comply with two post-judgment  
13 discovery orders. And in that case, the counsel came forward  
14 and said, I'm sorry, we just haven't gotten to producing some  
15 documents, it's not a priority, and they were producing a  
16 little bit of documents. But what the judgment creditors  
17 wanted were historical documents to figure out where the money  
18 had gone. That's the words that counsel used in that case.  
19 They said, We are here today to figure out how they were  
20 treating companies, how they were making transfers during this  
21 period, to figure out where all this money went, that they were  
22 collecting for years and then squirreling away, so that we can  
23 pull it back in the litigation. They hadn't produced any of  
24 those documents. The court there found it appropriate in the  
25 post-judgment context to make an adverse inference. And there,

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1 the adverse inference was much broader than any of the  
2 inferences that we were seeking in our moving papers. And it  
3 was characterized dismissively by counsel for Qin but, in fact,  
4 they made a finding there that they were entitled to an  
5 inference that such discovery that had not been provided would  
6 have been adverse to any defenses raised by the defendants  
7 there in any litigation related to collection on the judgment.

8 And that's what we are attempting to do here. And  
9 that's why I thought it would be helpful to provide you with  
10 the proposed order here because, really, we were trying to be  
11 more specific than we need to be. What we simply want is an  
12 adverse inference that in future enforcement litigation any  
13 inferences should be drawn against Qin when he has destroyed  
14 evidence or withheld evidence.

15 So, in paragraph 5 of the proposed order, you will see  
16 that, putting aside whether it is a fraudulent transfer, these  
17 transfers were sham transactions, with respect to King Fane,  
18 St. Tome, and PH 2003 Unit LLC, and St. Grand Ceremony LLC.

19 THE COURT: What counsel was saying --

20 MR. SMITH: We have no evidence to actually tie  
21 that --

22 THE COURT: Let me finish.

23 What counsel was saying was that it made no sense  
24 because, at the time the transfers were taking place, he did  
25 not know who these creditors would be; they hadn't yet become

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creditors.

MR. SMITH: Perhaps in some cases, but not in the case of the penthouses. In the case of the penthouse, that was purchased using a \$27 million loan by Luxury Team Inc. and PH 2003 Unit LLC, which we believe to be Qin's entities. The address for them were at the Applegreen Drive address. And in Ms. Liu's responses to the discovery requests, she identified various entities that she formed and she controlled. And these two particular, she said they were created for the purpose of purchasing properties, but she didn't say that she created or owned them. So we believe it to be Qin.

However, on March 28, 2001, the loans were transferred over --

THE COURT: May I hear the date again?

MR. SMITH: March 28, 2021, the loans were transferred over to St. Grand Ceremony LLC, which in fact is an entity that Ms. Liu, Qin's estranged wife, owns. And that date is significant because on 4/21/2021, the arbitration award in this case was entered. So within a week there was a massive transfer of equity in the Penthouse Plazas. And the loan guarantors there were Ms. Liu, and then JP Morgan Chase Trust as a trustee of the GLE Trust, which we believe is another one of the trusts that were set up to divert assets from Mr. Qin to avoid his creditors, including our clients.

And this is just an example. There's a lot of

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1 evidence that supports the inference. But we are not asking  
2 for a declaratory judgment against even Mr. Qin. We are asking  
3 for an adverse finding that, in absence of documents that he  
4 should have and that he should have produced, or that he in  
5 fact destroyed, all inferences should be made against him.

6 Now, to Ms. Blecher's point, in any future litigation  
7 in which we attempt to apply these adverse inferences, we are  
8 not asking for anybody to come in to be precluded from that.  
9 So the question of whether or not there is an offensive  
10 non-mutual issue preclusion --

11 THE COURT: That is my concern.

12 MR. SMITH: -- will depend on what excuse the entities  
13 give in the subsequent litigation. And we are not asking you  
14 to decide that. She is asking you to decide that. She is  
15 saying, well, in any future litigation it will be meaningless.  
16 But we are not asking for a determination of any future  
17 litigation. We are asking for a factual finding that, in the  
18 absence of any evidence being produced, which he should have  
19 and that has been destroyed here, that an inference should be  
20 drawn against Qin.

21 Now, if an entity comes in, or if Ms. Liu comes in,  
22 that's a presumption. They can rebut that presumption. But  
23 that's why it's helpful and important to us. Because there  
24 must be some remedy for the violation of this Court's orders.  
25 He can't just destroy evidence or withhold evidence or the real

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1 nature of these type of transactions.

2 By the way, a \$27 million mortgage taken out initially  
3 by these two entities, the amount of money that you have to  
4 have shown a bank, but that was before the bank transferred the  
5 mortgage over to an entity controlled by Ms. Liu.

6 So, clearly, there is money there. And this gets to  
7 one of the early points that Ms. Blecher made. It was in  
8 response to --

9 THE COURT: I believe it's Blee-cher, sir.

10 MR. SMITH: I apologize.

11 -- how is your client living? And her overarching  
12 response, before both of you drilled down a bit, she said that  
13 he had fallen on hard times; that he had a lot of money, but  
14 now he doesn't anymore. Well, if that were the case, where did  
15 the money go? We want to know where the money went. He didn't  
16 just go from having a lot of money to having no records of  
17 that. We are asking for the last five years. The last five  
18 years covers when he had a lot of money.

19 So, in fact, if he had bank accounts, they were  
20 drained to pay assets to creditors, he doesn't have them, or  
21 they were transferred in some manner, which he can say was  
22 legitimate, as gifts or anything else, that's fine. The  
23 problem is they don't have any answer to that. They just said  
24 he has fallen on hard times and we don't know where the money  
25 went. He sold an airplane. That's not where a billion dollars

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1      went.

2               So I just wanted to touch on those two specific points  
3      with respect to the remedies. And my colleague, Mr. Sant,  
4      wanted to address just a couple of the factual issues as well,  
5      if you would indulge us.

6               THE COURT: Briefly.

7               MR. SANT: Your Honor, if any of these you don't need  
8      to hear information about because you're satisfied, I will be  
9      happy to skip them.

10              The first point that Ms. Blecher raised was that there  
11     was some kind of unawareness of the issue about the ongoing  
12     Cathay Bank statements. I just wanted to highlight, in our  
13     reply on page 3 we write, "Qin produced no" -- and it's  
14     underlined and in italics -- "Cathay statements for the past  
15     seven months despite demand from petitioners."

16              Then in the attached Lee declaration, paragraph 5  
17     states, "Qin has only produced his Cathay Bank records through  
18     November 2022." And it goes on.

19              THE COURT: She indicated that was an oversight.

20              MR. SANT: It seems hard to imagine how somebody could  
21     read the brief and not see that, but I will move on to the next  
22     one.

23              We heard that his only active bank account allegedly  
24     had 500, now has a few thousand, that he hasn't used in a long  
25     time, which raises the question again, how does he live? It

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1 doesn't make any sense.

2 He claimed that he used some of the funds that came in  
3 to pay off certain credit cards. Again, no credit cards have  
4 been produced.

5 THE COURT: Again, I am not saying I agree with this,  
6 or I accept this, but what was said to us was that there was a  
7 corporate credit card of St. Tome, and he just doesn't get the  
8 bills for it. Which is, indeed, a great credit card to have,  
9 if you can spend and not get the bills.

10 MR. SANT: I would love to have that credit card. It  
11 sounds like it has amazing features.

12 I would note that he claimed to have received this  
13 payment from some kind of agreement ending his consultancy.  
14 That seems to be the same St. Tome consultancy.

15 THE COURT: Yes. You have not seen this agreement?

16 MR. SANT: No. It hasn't been produced.

17 THE COURT: He says he doesn't have his copy of it.

18 MR. SANT: He doesn't have the original St. Tome  
19 agreement, which he first said he sent to Singapore. Then he  
20 said he did have one in the United States but he didn't have  
21 space for it. But then he sent it to a storage unit in Hong  
22 Kong, and then it was destroyed. And now, somehow he has an  
23 agreement paying him money to end this consulting agreement,  
24 yet he can't get a copy of the actual consulting agreement?  
25 And this is a company run by his wife who he lives with, and

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1 it's not on any computer where they can print it out? I will  
2 move on.

3 Standard Chartered. He claims that he can't get these  
4 records that are in Hong Kong. I would just direct the Court's  
5 attention to our reply in support of the motion to compel. It  
6 is exhibit 3 to the Lee declaration. The e-mail here from  
7 Standard Chartered is not asking him to come to Hong Kong.

8 THE COURT: The Lee declaration or the Lee reply  
9 declaration?

10 MR. SANT: It's the reply declaration. It's exhibit  
11 3.

12 THE COURT: I am looking at it now.

13 MR. SANT: And there's other ones. This was just an  
14 example. But this is an example from Standard Chartered Hong  
15 Kong, and one can see that it comes from Therise Chan, Standard  
16 Chartered Hong Kong. And it says you can get access just by  
17 doing a chat with a live agent feature over the internet.  
18 There is no demand here to come to Hong Kong.

19 So, we heard about the deletions, and the argument was  
20 that he didn't delete anything of note. I would direct the  
21 Court's attention to deposition transcript page 383, line 9, to  
22 384, line 22, in which Qin testified that he "deleted most"  
23 contacts and communications when he "hired Seiden Law" in May  
24 or June 2022, and he "deleted a lot of things on WeChat then."

25 Again, we subpoenaed Seiden Law seeking any litigation

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1 holds ever sent to Qin and none were produced. We don't  
2 believe he ever received one.

3 I will move on to the next topic. I guess there is  
4 nothing to say here because opposing counsel agrees there is no  
5 bar to adverse inferences in the post-judgment context.

6 In terms of the contradictory testimony, I will just  
7 direct your attention to footnote 2 to our reply brief. We  
8 provide a whole bunch of examples of inconsistent and  
9 contradictory testimony, none of which was contested.

10 THE COURT: What footnote?

11 MR. SANT: It is footnote 2 on page 2 to our reply  
12 brief. We gave examples including -- it's just amazing, your  
13 Honor.

14 "I do know St. Fortune." "I don't know. I have never  
15 heard of it."

16 It's all a series of statements.

17 "Sometimes I use Uber." "I don't even know how to  
18 call Uber."

19 "I don't travel." "I have not traveled."

20 Here is an ellipsis. "I take my children to the  
21 summer camp in Geneva every year."

22 THE COURT: I see.

23 MR. SANT: I will move on.

24 I will skip this point. I think it's not necessary to  
25 make it.

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1 I heard some argument that maybe the three to four  
2 pages was a reference to the entire length of the transcript.  
3 We quoted at length this segment of the deposition testimony.  
4 We would simply direct the Court's attention to our original  
5 motion to compel, page 17. I won't read it for your Honor,  
6 except for the beginning it says, "How many pages was the  
7 attachment?" And it goes on and on. So this was an instance  
8 where he was asked three to four times just to make sure we are  
9 talking about the attachment here. And he keeps saying, yeah,  
10 the attachment. It's just not believable that he somehow  
11 thought it was the entire document.

12 I will skip again this one.

13 We heard that opposing counsel did not disagree with  
14 any information on the chart, which shows he has not complied  
15 with this Court's orders.

16 Regarding his travel back and forth to China. He was  
17 questioned about this during his deposition. He did not say  
18 anything about, I'm afraid of China, I got out of China. What  
19 he said was he left because of the pandemic. He said he left  
20 on the final day of the lockdown. He was told that the  
21 lockdown was coming and the final day he got out. And this is  
22 on page 105 of his deposition transcript.

23 His testimony a moment ago, whether it was accidental  
24 or intentional, it was incorrect in his testimony, he said that  
25 he was still in China in March. He just testified his last

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1 time was in February. Perhaps that was an accident and he  
2 misremembered.

3 I heard that you can't draw an adverse inference about  
4 his assistant Ali knowing what homes he has, because why would  
5 he know that just because he arranges places to stay. Your  
6 Honor, the person who helps you arrange places to stay probably  
7 knows what homes you have. I am not sure why that person would  
8 not know. But in addition to that, Ali also handles Qin's tax  
9 returns and other financial information. Mr. Qin testified  
10 that he would send this information to Ali by WeChat. And, of  
11 course, all those records are gone.

12 I believe your Honor has already assessed Mr. Qin's  
13 credibility through question and answer, but we certainly  
14 invite the Court to ask any further questions that the Court  
15 may feel is necessary to assess his credibility. We would love  
16 to understand why it is that he has no records that predate  
17 this Court's April 18 order other than a couple of holiday  
18 messages from December. All the other messages are after this  
19 Court's order requiring him to produce communications.

20 If this Court would indulge me for a moment, I will  
21 just say what I think is really happening, your Honor. I think  
22 Qin is still married. I think that he has papered over some  
23 transactions, but these are all shams. He is transferring his  
24 assets to his mother-in-law and his wife, and that's why he  
25 refuses to produce all these records because he knows what they

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1 will show. This is also why he doesn't produce his immigration  
2 records because it shows he is married.

3 THE COURT: Did he not say in his deposition that he  
4 was sort of maintaining the facade of the marriage for  
5 immigration purposes?

6 MR. SANT: I believe he confessed to it. Not only  
7 that. He confessed that he wanted to continue doing this.

8 In our original motion to compel, your Honor, we  
9 excerpted, and I won't read it for your Honor, but we excerpted  
10 a portion of Ms. Lee's deposition of Mr. Qin, where effectively  
11 she says:

12 "Did you tell the truth in your tax return?

13 "Yes.

14 "And your tax return says you live at 39 Applegreen  
15 Drive?

16 "Yes.

17 "And that's the truth, isn't it?

18 "No."

19 I don't know how to respond to that. This is what we  
20 have had for the entire length of his deposition, is this kind  
21 of self-contradictory answers that make no sense.

22 I would just like to make one final point and then I  
23 will sit down, your Honor. I heard about the burning money,  
24 that this was allegedly done because it could constitute  
25 evidence, and so they burned the money because somebody could

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1 misinterpret that cash because it had General Lui's name on the  
2 envelope.

3 Your Honor, you can just burn the envelope. This  
4 doesn't make any sense. And if you want to get rid of  
5 evidence, why are you filming yourself doing it, and then  
6 you're sending this video back and forth by the very phone  
7 messages that you claim the CCP is looking at. It doesn't make  
8 any sense. Nothing he says can be trusted. Again, I simply  
9 invite the Court to --

10 THE COURT: I need you to tone down the drama.

11 MR. SANT: In any case, I said that was my last  
12 comment. I will stick by my word. Thank you.

13 MR. SMITH: Your Honor, I apologize.

14 THE COURT: I do want you to come to an end.

15 MR. SMITH: This will be an end. It was just an  
16 oversight. I handed you the proposed order, but then never  
17 really referenced it. I won't go through it. Most of the  
18 pertinent information has been covered. The one thing that we  
19 do add there for your consideration is assistance by the US  
20 marshals to actually go to these premises where he said that he  
21 stays and where he has identified that he has property, and  
22 potentially records, to go in and seize any electronic devices,  
23 that he may not have brought to the court today, for imaging.  
24 And then also, in addition to that, various financial papers or  
25 records that we may see there that could be responsive to our

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1 production. We have added some language there, protection, in  
2 case we had something that is not Mr. Qin's and we would  
3 videotape. That's one protection that we have added there, in  
4 anticipation of objections to going into those properties and  
5 seeking those items.

6 So we respectfully request that relief as well.

7 THE COURT: Thank you.

8 Mr. Smith, let me please understand something. Am I  
9 correct, and the answer may very well be no, am I correct that  
10 there is not perfect consistency between the adverse inferences  
11 that are requested in appendix 3 and the adverse inferences  
12 contained in paragraph 5 of your proposed order?

13 MR. SMITH: That is correct. We thought we would  
14 simplify them.

15 THE COURT: You aim low.

16 MR. SMITH: This addresses the potential criticism  
17 that we got from Ms. Blecher that specific adverse inferences  
18 with respect to specific causes of action may be improper.  
19 Really, here, we are saying that, absent documents showing that  
20 these transactions were legitimate, they should be deemed sham  
21 transactions. Again, obviously subject to, in any subsequent  
22 litigation which we would be applying those adverse findings,  
23 subject to rebuttal by any other party.

24 With respect to (c), that's specific to the evidence  
25 that we are trying to find with respect to trusts, and we do

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1 believe or we hope that we will be successful in identifying  
2 some of those trusts, either through evidence compelled from  
3 Mr. Qin or his estranged wife. We say there "or money had and  
4 received," in parentheses, which is essentially the common law  
5 equivalent of constructive trust. You have heard about BVI  
6 entities. So if we needed to enforce these inferences in  
7 foreign jurisdictions, that's just an explanation about  
8 language that was not in other papers.

9 THE COURT: Thank you.

10 Counsel at the front table, do you believe there is a  
11 dispute between the parties as to the legal standards for the  
12 imposition of sanctions, the circumstances under which I can  
13 find contempt and the circumstances under which an adverse  
14 inference can be drawn?

15 And I will ask the question a little more pointedly,  
16 and then I will ask Ms. Blecher at the back table. I have law  
17 here. Do you wish me to read it into the record or do the  
18 parties agree with what the legal standards are for the  
19 imposition of sanctions for contempt and for an adverse  
20 inference? I gave all of those in my April decision. So I  
21 don't think I need to give it again.

22 MR. SMITH: Petitioners certainly waive any necessity  
23 to read into the record the standards. We certainly agree with  
24 the Court's articulation.

25 THE COURT: Ms. Blecher.

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1 MS. BLECHER: I think the parties are in agreement as  
2 to the overall standard for each of these specific cases. If  
3 one element is not present for what would be required in that  
4 circumstance we might disagree on, but overall, what the Court  
5 needs to find I think we are in agreement.

6 THE COURT: This is not a complete decision. But  
7 based on everything I have heard today, and based on the  
8 materials I have received, I largely reject the explanations  
9 given to me by respondent and his counsel for what has  
10 happened. And I do believe that he has not abided by my  
11 orders. He has willfully not abided by my orders. He has done  
12 everything possible to avoid abiding by my orders. And he has  
13 lied to me and he has lied at his deposition. So I do find  
14 that there are violations of my prior discovery orders, and I  
15 also find that he is contempt. And the issue then is, what are  
16 the sanctions available to me?

17 I do intend to find certain adverse inferences. We  
18 can do it whether we call them inferences or facts. I was  
19 looking at what was in appendix 3. I agree with Ms. Blecher  
20 that it is not entirely clear to me that each one of those is  
21 something that I can find at this stage and on this record.

22 So I am going to take that component of my decision  
23 under advisement and figure out which of the things that are  
24 now sought in the proposed order are things where I can find  
25 not only that there is contempt or a discovery violation, but

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1 where the appropriate sanction is the adverse inference that is  
2 requested in paragraph 5 of the proposed order. So that is  
3 something that is still under consideration.

4 The issue of remand is very much a live issue. But  
5 for several reasons, including the lateness of the hour, I am  
6 not going to remand Mr. Qin at this time. But I am still  
7 thinking about it. I have not decided against it. I just want  
8 to have an opportunity to look at everything that has been  
9 given to me.

10 I am going to ask the parties to do certain things. I  
11 am going to ask petitioners' counsel to e-mail the proposed  
12 order to chambers so that I can work with it and modify it if  
13 need be. I am going to ask respondent to obtain a copy of this  
14 transcript on an expedited basis. And by expedited, I am not  
15 saying tonight or tomorrow, but within a week or two, so that I  
16 can have it with me and work with it.

17 There is an issue that was addressed earlier. It was  
18 an issue about producing tax returns and additional bank  
19 records that have come to light. I imagine that will be done  
20 within a week.

21 Then there is the issue about devices. My  
22 understanding is that Mr. Qin has a device here in the  
23 courthouse somewhere, but something tells me I don't have it up  
24 with me. And to be clear, whatever that device is is going to  
25 the gentleman in the gallery for imaging tonight. And I

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1 presume as well, because you have already agreed to do so, that  
2 what is known as the Chinese phone will also be produced to the  
3 gentleman in the gallery from Setec Investigations.

4 MS. BLECHER: Your Honor, I am sorry to interrupt. I  
5 believe that phone is actually down with the marshals.

6 THE COURT: Let me ask these questions.

7 Mr. Zhang, I thought I understood from conversations  
8 you had with my deputy that you have his current phone. Did  
9 you misspeak?

10 MR. ZHANG: I misspoke. I don't have his current  
11 phone.

12 THE COURT: You have the former phone, which is in my  
13 hand, which I can turn over to the gentleman from Setec for his  
14 imaging. And understand that you all, those in the back table,  
15 will be responsible for giving him the information that he  
16 needs to access this. So I hope your client remembers the  
17 password that was used for this phone. I am allowing you to  
18 make arrangements with Mr. Setec to retrieve the phone whenever  
19 it is appropriate.

20 Where is his current phone, sir?

21 MR. ZHANG: I don't have the answer to that.

22 THE COURT: Talk to your client and tell me.

23 THE DEFENDANT: Because I was informed before I came  
24 here that I cannot take my phone in with me, so I left my phone  
25 with theirs.

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1 MR. ZHANG: It's not in my office.

2 THE COURT: Would you chat with your colleagues and  
3 figure out where this phone is right now. And someone report  
4 back to me where the phone is. Thank you.

5 Mr. Zhang, I am quite confused because my deputy has a  
6 firm recollection of you saying you kept his phone in your bag.

7 MR. ZHANG: I think I misspoke. I just had that phone  
8 with me today.

9 THE COURT: You have no bag with you now?

10 MR. ZHANG: No.

11 THE COURT: Having consulted with your colleagues,  
12 where is Mr. Qin's phone?

13 MR. ZHANG: He said it's highly likely he put it in  
14 the conference room in the firm. Because we did tell him that  
15 the court does prohibit him to bring a phone unless he has  
16 attorney license or permitted by the Court.

17 THE COURT: It is your belief that it is somewhere in  
18 your office?

19 MR. ZHANG: Somewhere in our firm.

20 THE COURT: Where are your physical offices, sir?

21 MR. ZHANG: My office is 322 Eighth Avenue.

22 THE COURT: I guess I am confused. If you advised  
23 your client you couldn't bring phones, why did you bring this  
24 phone?

25 MS. BLECHER: Mr. Qin was in our office before we came

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1 here, and he said separately on the way or when we were  
2 walking, Oh, I want to give you this phone to have, and we did  
3 not then take it and put it away. So that kind of came here  
4 with us.

5 THE COURT: All right.

6 Mr. Smith, the gentleman from Setec is named what,  
7 please?

8 MR. KYPRIANOU: Tino Kyprianou, T-i-n-o,  
9 K-y-p-r-i-a-n-o-u.

10 THE COURT: Thank you.

11 Mr. Kyprianou, let me please understand the process by  
12 which this phone is imaged. You will be speaking with the  
13 folks at respondent's counsel table to get information about  
14 the password, and you will be explaining to them, I imagine,  
15 that there will be something done to the password to prevent  
16 someone from remoting in while you're doing your work?

17 MR. KYPRIANOU: We have to put it on airplane mode and  
18 take it off WiFi.

19 THE COURT: How long does the imaging process take?

20 MR. KYPRIANOU: It all depends what kind of phone it  
21 is and how much information is in there. If it's an Android  
22 phone, it might take five, six hours. If it's an iPhone, it  
23 might take less.

24 THE COURT: I believe it to be an iPhone.

25 MR. KYPRIANOU: It might take, maybe, two or three

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1 hours.

2 THE COURT: Sir, does someone have the ability to  
3 accompany respondent's counsel to their office to pick up the  
4 other phone?

5 MR. SMITH: Absolutely. And we would go with Mr.  
6 Kyprianou.

7 THE COURT: So that will be this evening. I will let  
8 you all figure out who draws the short or long straw to  
9 accompany him back to the office.

10 I am going to hand the phone to my deputy so that you  
11 can all see me hand it to Mr. Kyprianou.

12 MR. KYPRIANOU: Can we take it back to our lab and do  
13 it?

14 THE COURT: You can take it back to your lab, sir. I  
15 want you to have both phones in your possession this evening.

16 MR. SMITH: Also, I understand your Honor's order to  
17 be directing respondent to provide Mr. Kyprianou with all  
18 necessary passwords, access codes?

19 THE COURT: Yes. All of those things. It's not worth  
20 it for him to have the device if he can't access it.

21 That's enough for one evening.

22 MR. KYPRIANOU: We can have the password here, but if  
23 there are any messages on the iCloud, then we need the password  
24 for that as well to access the iCloud.

25 THE COURT: I would expect that the iCloud passwords

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1 will be given in addition to the password to access the phone.

2 Thank you everyone for your time, which has been quite  
3 extensive this afternoon. You will hear from me going forward.

4 Thank you.

5 (Adjourned)